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REPORT OF THE Archbishops' Committee *On* CHURCH AND STATE

This Report proposes a method by which, while protecting the right of the State to a veto on Church legislation, the Church may secure a real power of self-government. It deals with the historic relationship of Church and State in England, and with the grounds of the claim of the Church to spiritual independence. Among the subjects dealt with in Appendices are:—the constitutions of the other Churches of the Anglican Communion; the Established Church of Scotland; Canonical legislation, and Parochial Church Councils.

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The Right Rev. Bishop Browne, D.D.
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Colonel Sir Robert Williams, Bart., M.P.
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The Hon. Edward Wood, M.P. (resigned).

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REPORT.

I.

INTRODUCTION.

To the Archbishops of Canterbury and York.

YOUR GRACES,

Appointment of the Committee.

On July 4, 1913, the Representative Church Council passed with one dissentient the following Resolution:—

> "That there is in principle no inconsistency between a national recognition of religion and the spiritual independence of the Church, and this Council requests the Archbishops of Canterbury and York to consider the advisability of appointing a Committee to inquire what changes are advisable in order to secure in the relations of Church and State a fuller expression of the spiritual independence of the Church as well as of the national recognition of religion."

In deference to this request you appointed us as a Committee, giving us as the terms of our Reference the above Resolution.

Meetings.

The Committee has met on twenty-three days, including two sessions of nearly a week each, held in September, 1914, and September, 1915, at Oxford, when the Junior Common Room of Balliol College was kindly lent to us by the authorities of that college.

Personal matters.

One or two personal matters call for brief reference.

It was no small gain for a committee entering on a task of such great importance and difficulty to number among its members one of the foremost living English authorities on the law and custom of the constitution. The combination in the late Sir William Anson of devoted churchmanship, wide historical learning, and tried knowledge of public affairs was an asset which could not be easily over-estimated. He had only, however, been able to take

part in the preparation of memoranda, legal and historical, before in the early summer of 1914 the Committee shared with Church and Nation the loss sustained in his death.

Mr. H. J. Torr and the Hon. Edward Wood, M.P., have felt themselves compelled, by military duties, to resign their places on the Committee; and the same cause obliged Sir Foster Cunliffe to resign the secretaryship, though happily not before he had, with the Chairman, almost completed the compilation of the Report in draft; and he still retained his membership of the Committee. The Rev. J. V. Macmillan took over the secretaryship, and, on his acceptance of a chaplaincy in France, was succeeded by the Rev. Canon Masterman. The Committee gratefully places on record its sense of what it owes to its secretaries' courtesy, skill, and energy.

Terms of Reference

The operative words of the Reference to the Committee are :—

> ". . . . to inquire what changes are advisable in order to secure in the relations of Church and State a fuller expression of the spiritual independence of the Church as well as of the national recognition of religion."

These are large words. They might have justified us in undertaking extensive inquiries into the methods by which the "national recognition of religion" might find more adequate expression, and the Church become more fully the organ of the spiritual life of the nation. Some disappointment may therefore be felt when it is seen that your Committee has devoted the greater part of its labours to one point only, namely, devising a scheme of Church Councils and considering how they may gain reasonable freedom to carry through legal and effective action on behalf of the Church. This, it may be said, is only a department of the problem suggested by the terms of reference. But we entertain no doubt that this is the task which it was really the intention of the Representative Church Council and of the Archbishops to entrust to us.

The Church of England is paralysed in some directions because it has not power to adjust the organisation and the rules and manuals of worship which it inherits from past centuries to the deeply changed conditions of the present day. The wheels of the ecclesiastical machine creak and groan and sometimes refuse to move. Corporate discipline is ineffective because our rules and procedure are in many directions quite antiquated.

Parliament, especially the Parliament of the present day—which is in no sense a church assembly—is not the right body to

undertake the task of adjustment; and it could not, even if it would, find time for the work. If the Church is to adjust itself adequately to the needs of the present and the future, that is to say, to do what every living society must do, it must be free to legislate and judge and act for itself, though subject to a reasonable measure of control by the State which still accepts it as the minister and teacher of religion. We have, therefore, concentrated our attention on devising means for this free action of the Church, and at the same time on providing a sufficient check on the side of the State. We are sure that nothing but a restoration of self-government to the Church such as we contemplate will enable it to act effectively as the organ of the spiritual life of that great part of the nation which looks to it for guidance and help. It is a great and not a petty task to which we have applied ourselves. The right not only of individuals but also of corporations within the State to make the best of themselves is involved in any true conception of freedom, and the power of self-government in spiritual matters is so essential a part of the very idea of the Christian Church that any part of the Church that lacks this power lacks something which is vital to its welfare. For the State, which asks much of the National Church, to withhold from it this power would be a failure on the part of the State to recognise an essential principle of healthy national life.

Preliminary investigation necessary.

It appeared to your Committee that its first duty was to investigate the relations of Church and State in the past and at the present day, with the object of arriving at the cause of the discontents which prompted the Representative Church Council to pass the above Resolution. At the same time it felt that it would be a grave error to limit its enquiry to the Church in the Provinces of Canterbury and York alone. Your Committee has therefore extended its survey to the other Churches of the Anglican Communion, with the object of acquainting itself with those features of their constitutions which, in view of the close connexion between them and the Mother Church, it is important to bear in mind. In addition to this, your Committee has examined some documents relating to the constitution and present circumstances of the Established Church of Scotland, for they throw a remarkable light on the degree in which, under certain conditions, it has been found possible to co-ordinate the principle of spiritual independence with that of State recognition. Not until these preliminary investigations had been carried out did your Committee think it possible to proceed to consider remedies or formulate definite recommendations. In accordance with this view it occupied itself, during its first months of activity, with the preparation of a number of memoranda. These were drawn up either by individual members or by sub-committees specially appointed, and deal from various points of view with the subjects men-

tioned above. They were then circulated to the Committee, and their subject-matter was afterwards discussed at general meetings of that body.*

All our recommendations would apply equally to the Welsh Dioceses of the Province of Canterbury, if the connexion between Church and State in the Principality remained unsevered.

* Some of these are printed as Appendices to this Report.

II.

THE RELATIONS OF CHURCH AND STATE IN ENGLAND.*

The aim of this historical preface is not to attempt, even in bare outline, a narrative history of the English Church, but to notice some of the main points in its history which concern its relation with the State and were of permanent importance for its later character, its relations with the nation at large, and its own unity and corporate consciousness.

The beginning of Christianity in Britain.

The earliest record of Christians in Britain is about 200 A.D. Missionaries had by that time gained a considerable foothold in the portion of the country under Roman rule and were pushing further afield. When the Romans evacuated Britain (410-426) a Christian Church existed here, organised under bishops and clergy and vigorous enough to undertake mission work. St. Ninian (401) was preaching to the Picts in the north beyond the Forth, and somewhat later St. Patrick was earning his title as the Apostle of Ireland. This ancient British Church was very isolated, and for the century or more which followed the withdrawal of the imperial forces was practically cut off from contact with the Roman See. It held tenaciously to customs, *e.g.*, as to the date of Easter, which differed from those of the Roman Church generally. The Anglo-Saxon Conquest, beginning in the fifth century, involved the gradual breaking up of the British Church. In Britain itself the Church was pushed far back into the west before the invaders, and did not attempt the conversion of the new heathen masters of the country. It seems not to have been much affected in Scotland and Ireland, and was strong enough even to send out missionaries from Ireland, *e.g.*, Columba (563) to Iona, and Columbanus (585) to Gaul.

The Augustinian mission.

In 596 Pope Gregory I. dispatched the Augustinian mission to Saxon England. Augustine and his companions converted Ethelbert, King of Kent, and brought the new Church into strict dependence on the Roman See. The triumph of Christianity over heathenism in the various English kingdoms took a long time (597-681), and was subject to much fluctuation. When it was at length achieved, some (*e.g.*, Kent, Wessex, and East Anglia) had accepted the faith after the Roman model, and others (*e.g.*, Northumbria, Mercia, and Essex) had acquired the Celtic traditions of the old

* This section (pp. 5-27) of the Report has been prepared by Sir Lewis Dibdin and Mr. A. L. Smith at the request of the Committee, which has adopted it without assuming responsibility for all its details.

British Church, which missionaries from Iona did much to keep alive. There was thus a considerable divergence of practice in different dioceses, and there was no organised relation between the dioceses of the various kingdoms. But at last, in 667, the Pope, at the request of the Kings Oswy of Northumbria and Egbert of Kent, appointed to the vacant See of Canterbury Theodore of Tarsus, to whom is due the consolidation of the English dioceses into a province. The Council of Hertford in 673 marks the date of the real primacy of Canterbury. Wilfrid Bishop of Northumbria (himself brought up at Lindisfarne, an offshoot from Iona which had become the headquarters of the Celtic Church) had at the Council of Whitby (664) procured the abandonment of the Celtic date for Easter, and so virtually abolished the ritual differences between different dioceses. From this time the Church of England may be said to have existed as an organised ecclesiastical province under an Archbishop of Canterbury in close relation to the See of Rome. York, after a brief life under Paulinus (628-633), did not become the provincial see of the north until 735, when Archbishop Egbert received the pall from Pope Gregory III. Thus began again that harmful division between Canterbury and York, which, amongst other things, led to the murder of Becket, helped to defeat Edward I.'s plan of an estate of clergy, prevented any union of the English Church except under papal legates, and deepened that rift between north and south which showed itself in the Wars of the Roses and the Civil War, and lasted till the Industrial Revolution. When Pope Gregory designed that there should be one archbishop at York and one in London, each with twelve suffragans, he was making the natural assumption that England was what Roman Britain had been, but he was setting up a dualism inconsistent with the true functions of a great spiritual body.

FACTORS IN ENGLISH RECEPTION OF CHRISTIANITY.

There were other factors in the English reception of Christianity which were of permanent importance for the history of the English Church. (i.) Before the Christian faith heathenism fell without a serious struggle. The heathen priest ceased to be heathen, but there did not cease to be a priest who still held his double share in the village acres, still supplied the village bull and boar, and was still appointed by the lord; the term "village" was not officially displaced by the term "parish" till late Tudor times. The village church itself was the patron's freehold property. This view of spiritual functions—a view which regarded the benefice as a "living"—was always typical of a crude English attitude towards church matters. (ii.) The first converts were the tribal kings, and Christianity in England spread downwards, not upwards, as in the Roman Empire. It was a consequence of this that English prelates were consecrated under a royal writ, and till Anselm's time, even invested with ring and crosier at the

(i.) Assimilation of old machinery.

(ii.) Kings the first converts.

king's hand. (iii.) Yet no people received the new faith more whole-heartedly than the English. It was a complete acceptance by the folk, not the alliance of an organised Church with a rival State. In no land was there such a blending of spiritual and temporal action as is seen, for instance, in the Charter of Canute, where ealdormen and shire-bishops join in "maintaining God's rights and my royal authority and the weal of all the people," and "Thurcyl my earl" is to "bend to right the unrighteous one or destroy him in the land, be he of great account or small." As Bishop Stubbs says, "the distinction between spiritual and temporal authorisation was very lightly drawn," and the maxim *rex est vicarius Dei* was centuries older than Henry VIII. (iv.) The first stage of church development was monastic. Bede describes the "circuits" of the early mission centres, and in Edgar's laws the "old minster," to which each district belongs, was still "entitled to every tithe." Thus there came about a rivalry between the two principles represented by the regulars and the seculars, which tore and distracted the English Church for 900 years (for already Bede complains of the overgrowth of monasticism), and which diverted church endowments from the cure of souls to other purposes, and eventually alienated these endowments to greedy courtiers and landowners. Again, a bishop in early Anglo-Saxon times was generally head of a community of monks, but had little control over the parish priests. In later times he was almost ousted from his own cathedral by the community of the dean and chapter. Moreover, there never were movements of which the old maxim *corruptio optimi pessima* was more true than those which produced the various orders of monks and friars. In all these ways the monastic origin of the English Church has deeply influenced its history.

(iii.) New faith received whole-heartedly by the folk.

(iv.) First stage of church development, monastic.

"In a single century England became known to Christendom as a fountain of light, as a land of learned men, of devout and unwearied missions, of strong, rich and pious kings" (Stubbs). This description by itself would give a one-sided view of the early Anglo-Saxon Church. Already before the death of Bede he found much to censure severely; especially the overgrowth of monasticism, and that a monasticism which was often only nominal. On the other side was the narrow escape of the clergy from becoming a hereditary caste, the slow and imperfect development of the parochial system, and indeed of all ecclesiastical organisation, the appalling moral standards revealed in the Penitentials (*i.e.*, manuals for instruction of clergy in dealing with penitents), the fusion, or rather confusion, of morality, religion and law. It is evident that primitiveness must not be mistaken for purity or perfection.

Chequered state of early Anglo-Saxon Church.

For another century the country itself remained broken up into petty kingdoms, but from the accession of Egbert (827) there was

Church and State under the Saxon kings.

a gradual advance towards the political union of England. The relations of Church and State were intimate throughout this period. From the time that Archbishop Theodore organised the Church, sub-divided the old dioceses, each of which had usually been co-terminous with a kingdom, created ecclesiastical machinery and exercised discipline over clergy and laity, there was the closest co-operation between the civil and the spiritual powers. The bishop and the ealdorman sat side by side and heard ecclesiastical and secular cases in the same court. The king and his nobles were present and assenting parties at church councils, and the bishop was a member of the Witan. Ecclesiastical laws were made or re-made both in church councils and in the Witan. Bishops were sometimes, in form at least, elected by their chapters, but more often practically nominated by the king, and sometimes the Pope had a share in their appointment. The payment of tithe for the support of the clergy, the church and the poor was taught as a religious duty from the first, and from 787 was made compulsory by the king's laws no less than by the Church's canons. Lords of land must pay tithe, but might often pay it to whom they would; and not till 1200 was tithe required to be paid to the parish priest.

The Danish invasions a disaster to religion.

The Danish invasions, covering two centuries, were in their political results a terrible but needed discipline. Their results on the religious life of the nation were almost wholly disastrous. It was not merely that most of the monasteries were sacked, that the Church in Middle and Eastern England fell into abeyance, and the North was cut off once more from the South, that learning was reduced to the condition described by Alfred, "not one south of Thames could turn a Latin letter into English," that the bishops had to lead the levy in arms. But it meant also that the revivals under Alfred and under Edgar and Dunstan were only partial and temporary. It meant also that the last two hundred years of Anglo-Saxon Church history were a period of deepening gloom, marked by simony, by the abuse of pluralities, by unpopular foreign prelates, by growing disconnection from Rome and the wider air of Christendom. Throughout the whole body there was corruption, ignorance, and secularity, from bishops, who were court officials, to priests, who were untrained peasants. "The exhaustion of the Church coincided with that of the State; the time had come for Lanfranc and Anselm as well as for William of Normandy and Henry of Anjou" (Stubbs).

William the Conqueror introduces a new era.

The Norman Conquest marks a new era in the relations of Church and State in England. William the Conqueror, while he displaced most of the holders of the higher ecclesiastical offices, retained bishops and abbots in his Great Council. Church councils continued to be held, but the Archbishop of Canterbury

and the bishops were enjoined "not to enact or prohibit anything but what had been first ordained by the king." His most important measure was the separation of the ecclesiastical and secular jurisdictions. Church courts were to try cases "which belong to the governance of souls" according to bishops' law. The Hundred Courts were to deal with civil cases according to common law. The Pope, as the head of the Western Church, acquired increased power as one consequence of this change; for canon law, notwithstanding some infusion of local custom, consisted mainly of rules and decrees which issued from or were acknowledged by the central See of Rome. Its effective influence became apparent as soon as a system of courts existed for the administration of church law only. Possibly another result of the separation of the spiritual from the temporal courts was the recognition of the right of the latter to "prohibit" the church courts if they attempted to meddle with secular matters, and it was not the church courts that were free to define what was "secular." This right the temporal, *i.e.*, the king's courts, have exercised from a very early date. The area of ecclesiastical jurisdiction was restricted within narrower and narrower limits as time went on, notwithstanding the strong and frequent protests of the bishops and clergy.

William's attitude towards the Pope.

But William also asserted for the Crown a great measure of independence of the Pope. He refused Gregory VII.'s (Hildebrand's) demand for fealty. Nor was any Englishman to acknowledge a Pope as apostolic until the king issued his consent. He forbad any papal legate to land in England without the king's licence. Papal letters were not to be published until they had been shown to the king. None of the great ecclesiastics of England could quit the realm without the king's permission. William also exercised the old right of "investiture" of the bishops by the giving to them of the ring and staff. But in time the growing church spirit revolted against this lay investiture, forbidden as it was by the Council of Bari, 1099. The conflict was at last ended in 1107 by a compromise between Henry I. and Anselm under which the bishops received ring and staff at their consecration, but before consecration did homage to the king for their temporalities.

Results of Norman Conquest.

Growth of papal influence.

The Norman Conquest had other permanent results for the English Church, which now was brought out of a backwater into the full current of Christendom. This meant a steady growth in the influence of the papacy, and in this there lay far more of good than of evil, at least from Gregory VII. to Innocent III. Other results were the building of the great cathedrals, the transfer of bishops' sees from villages, like Elmham and Crediton, to cities, like Norwich and Exeter, the introduction of the great monastic revivals that were now regenerating the Continent, the

Feudal hold of Crown over the bishops.

establishment of the rule of clerical celibacy, the greater control of bishops over the parochial clergy, the development of feudal hold of the Crown over the prelates. This last point was very marked: Anselm brought out the other fact that prelates were pastors, but they remained barons, too, *sicut barones ceteri* (*Const.*, Clarendon, sec. 11), doing *liege* homage, paying reliefs and aids, and bound to supply knights; and the "free election" promised by Henry I. and by John was severely qualified by having to take place in the king's presence (*Const.*, Clarendon, sec. 12). Under William and Lanfranc "the plough was drawn by two strong oxen, the king and the Archbishop of Canterbury," as Anselm expressed it. But this personal harmony only concealed inherent difficulties. The inflowing of the Hildebrandine principles of demarcation between the spiritual and the temporal was assisted by the differentiation of spiritual from temporal courts. Notwithstanding all the wide diversities which the Church embraced, of wealth and social status, and all the rivalries between seculars and regulars, and between beneficed and unbeneficed clergy, there was a rapid growth in the sense of ecclesiastical unity. This unity grew with the growth of canon law, of papal influence, of crusading movements, and of clerical taxation from 1189. This unity is already discernible in the collision between the Crown and the churchmen under Stephen, but it first became conscious in the mighty wave of feeling evoked by the murder of Archbishop Becket at Christmastide in his own cathedral. For with the separation of the ecclesiastical and secular courts it was natural that differential treatment of the clergy should be claimed as their right, and accordingly this question came to a crisis in the quarrel between Henry II. and Becket a hundred years after the Conquest. The Constitutions of Clarendon, "*i.e.*, the record of ancient customs drawn up and recognised by prelates and barons at Clarendon in 1164," claimed as the established rule that a criminous clerk be first brought before the temporal court to plead, then on claiming his "clergy" be taken to the ecclesiastical court for trial, but with royal officers watching the case, so that if he be found guilty and degraded from orders, he be taken back as a layman to the temporal court to suffer a layman's punishment. On Becket's side the answers to this claim show the extraordinary boldness to which sacerdotalism had advanced. He said, (i.) Christ did not say, I am the custom, but I am the truth; (ii.) dare any one bind, as the hands of a malefactor, those hands which but now have been making God (*quae nuper faciunt Deum*)? (iii.) Not even God punishes twice for one offence.—William of Newburgh, a clerical historian, tells us it was reported there had been a hundred clerical murderers since Henry's accession, and that men said a clerk is allowed one murder free. But all the strength of Henry's case vanished before "the sainct martyr of Canterbyr." The king renounced "the damnable customs," but treason was above and misdemeanours

Growth of sense of ecclesiastical unity.

Quarrel between Henry II. and Becket.

below the range of this renunciation; clerical traitors and clerical poachers had no clerical "immunity." This was the settlement effected in 1176. For the king had something to offer in return, namely, that murderers of clerks should be punished by his royal courts. Thus criminous clerks continued to be haled before the king's court, and if the court professes not to hold a "trial" of such, yet it does take an "inquest of office" as to their guilt (Bracton, &c.). At this point the bishop, Dr. Stubbs hoped, would only interfere to save innocent clerics; but the Plea Rolls refute this optimistic view. "Benefit of clergy" was so exercised as to do "immeasurable mischief in England by fostering crime and crippling justice." In later times "benefit of clergy" could only be claimed after conviction and in arrest of sentence. It was indeed gradually limited by excluding particular crimes from its shelter, and on the other hand there was a gradual extension of the class entitled as "clergy" until the "privilege" became practically universal, and then, in the nineteenth century, disappeared altogether.

The jurisdiction of the church courts.

Becket's case marks also a critical date in the whole field of ecclesiastical law in its relation to the State. The church courts' jurisdiction over spiritual offences of laymen, such as immorality, slander, usury, and over matrimonial and testamentary cases, remained much as it had been defined at Clarendon. The Church retained a large province, but nothing like so large as she had claimed, and the compromise of 1176 was mainly in favour of the Crown. Henry II. kept in his own courts the cognisance of rights of patronage to benefices, of lands claimed in "free alms" (*i.e.*, alleged to have been given to the Church freed from feudal burdens), and of contracts made on a pledge of "faith." The church courts retained jurisdiction as to land, where the claim of "free alms" was admitted, and (more doubtfully) as to contracts where the pledge of faith concerned spiritual matters. "Henry's most lasting triumph was that he made the prelates of the Church, like Bracton, his justices." The famous declaration of 1236, *Nolumus leges Angliæ mutari*, was a flat refusal to accept as part of the law of the land the canon law legitimation of children born before marriage, and it is a refusal by barons many of whom were clerks. The Church's jurisdiction over the morals of the laity was obviously open to abuse, and it was abused. The inquisitorial interference of officials with the intimate family life of the people, their sordid cupidity, and the commutation, allowed by canon law, of penances for money, made church courts a target for reformers and rendered the archdeacon and the summoner hateful figures.

The Church the champion of the people.

In another way 1176 witnessed a compromise, a compromise as to the papal hold on the English Church. The Consuetudines

at Clarendon had at first rejected appeals to Rome; they were not to go beyond the king's court (*ulterius*), and in this is implicit the legislation of Præmunire in the fourteenth century, and even the breach with Rome under Henry VIII. The prohibition of appeals to Rome disappeared when the Consuetudines were renounced. But papal policy had always to temporise so much that Rome proved more and more a broken reed for the Church to lean upon: "Rome ever releases Barabbas" Becket had said bitterly. It is true that under John and Henry III. there was for a time a great advance in papal control. John's defeat over the election of Archbishop Langton, and his submission of his kingdom as a fief to the Pope, seemed to bring to a successful issue a long cherished papal ambition. But other and very different results also followed. The nation acquired the Church for its champion. It was the Church which suggested the Great Charter, which drew it up, which got it re-enacted, and the Church kept up this attitude of constitutional leader till 1297, though most markedly in connection with the years 1216 to 1265, and especially with Simon de Montfort, whose championship of the people against royal misgovernment and papal exaction the clergy heartily supported. It is in church assemblies, too, that the principle of elective representation was first worked out; the model Convocation was achieved in 1283, the model Parliament not till 1295.

The "golden age" of the English Church.

Not without justice has the thirteenth century been called the Golden Age of the English Church. But this eulogy becomes less and less true as the century goes on, and even at its best the gold was much alloyed. In the first place the papacy was rapidly tightening its hold on the English Church, and that hold was not entirely for good. From 1221 the Archbishop of Canterbury was always *Legatus natus* of the Holy See. England was "the milch cow" for foreign "provisors" and pluralists. With the ill-omened alliance of the papal and the royal power against Church and nation, the latter two were "caught between the hammer and the anvil," and forced awhile into a union closer than ever before or since. It went so far that Grosseteste, the greatest churchman of the age, whose reiterated watchword was that rebellion is as the sin of witchcraft, who saw in the papal authority the only hope of reform, yet openly stated to the papal court at Lyons "the cause and fountain-head of these abominations is this court." As long as the Pope was regarded as God's vicegerent, all this protesting was inevitably futile; but it shows how far back the material for the Reformation was being gathered. It is in the joint protest of clergy and laity in 1247 that Matthew Paris adds in the margin "note here a word of dread, the hidden threat of desertion from the obedience of Rome."

Alliance of the Pope and the King.

Decay of monastic orders.

In the second place, the monastic orders have passed their best

before the latter part of the century. Their wealth to a large extent meant so much withdrawn from parochial endowments. In one year Grosseteste had to depose eleven heads of such foundations. The new orders of friars arriving in 1221 very soon became wealthy, and began to cut into the parochial system by their newer methods and easier conditions. Similar jealousies and strifes ran through the whole ecclesiastical body.

Inter-relation of the Church and nation.

Beneath the appearance of harmony there was a growing separation between the Church and national interests. With the reign of Edward I. there comes the parting of the ways, the choice for churchmen between the two claimants on their allegiance, king and Pope. The watchword of the Ultramontane party was *immunitas ecclesiæ;* but Edward I. was determined on a parliamentary "estate of clergy," taxable like other estates. Moves on the one side were the appointment of Archbishops Kilwardby and Peckham, both friars, by papal "provision," the canons at Reading against royal cognisance of "cases belonging absolutely to the spirituality," the bull *Clericis Laicos* forbidding churchmen to pay taxes on their benefices (1296): on the other side, the protection of the realm by the Mortmain Act, the re-assertion of royal jurisdiction by the writ *Circumspecte Agatis*, and the outlawry of Archbishop Winchelsey and the clergy (1297) for their refusal to disobey the bull by paying taxes. In this case of Winchelsey, as in the cases connected with Anselm and with Becket, the settlement was by a compromise. The clergy followed the archbishop's counsel, "let each save his own soul," but the coincident quarrel with the earls about service abroad and with the nation about the maletote on wool made Edward consent to terms, while the Scottish invasion offered to the clergy a way out of the constitutional deadlock; they made a voluntary offering. This was all they won, the illusory convention of making "free gifts," and the disastrous victory of withdrawal from Parliament to Convocation. The nation was no longer ready to follow the Church as leader against the Crown; in vain did the clerical chroniclers speak of the struggle as a holy war and of the archbishop as Elijah. The last ten years of Edward's reign accentuated his victory; the 104 barons at Lincoln (1301) repudiated papal interference in the question of Scotland. In 1305 began the seventy years of Babylonian captivity in "the sinful city of Avignon," as the Good Parliament (1376) bluntly described it. The increasing pressure of papal provisions and reservations, annates and appeals, became all the more intolerable when they were being exacted by popes who were not only unscrupulous men but were also Frenchmen. Nor were the Provisors and Præmunire statutes (as to which see later) of any real avail, owing to collusion between Crown and papacy, which was called an alliance between the wolf and the shepherd against the sheep; "if the King of England

wishes an ass to be made bishop he must have it" was a saying of Clement VI. It was no wonder that in 1366 the whole Parliament repudiated the tribute to Rome promised in 1213 but in arrear since 1333. But it was significant that the Good Parliament in its resentment against the papacy did not so much express concern for the English Church as for the English common people and for the defrauded Exchequer. In the same spirit the Parliament of 1391 passed the Act against the evasion, by the device of uses, of the old Mortmain Act of 1279. Another significant thing was the application of existing monastic endowments to new purposes; alien priories were seized during the Scottish and French wars; Winchester and New College, Sion and Eton and King's College were endowed from confiscated monastic lands. This tendency was made into a principle by Wyclif: Church property if abused, could, he argued, be reclaimed for State uses. His Lollard followers, as late as 1410, were strong enough to send up a petition through the knights of the shires that the lands of the bishops and religious corporations should be applied to the endowment of 15 earls, 1,500 knights, 6,000 squires, and 100 hospitals, and £20,000 a year to go to the Crown. Wyclif himself had also gone far in other directions. The Pope's ban, he said, was of no force against a good man. The Pope himself might be "a sinful caitiff" or even a lost soul. He denied Transubstantiation, and called it idolatry. In fact, with his order of Poor Priests and the diffusion of his English tracts and English translation of the Bible, the question arises, Why did not the Reformation come a century and a half earlier than it did? But such a question cannot be discussed here.

Secularisation of monastic endowments.

Wyclif.

Wyclif, who himself died as a parish priest, had also represented a great revival of the "seculars" against monks and friars. That the soundest element in the English Church of the fourteenth and fifteenth centuries was the parochial clergy is also the evidence of Chaucer and of Piers Plowman. But among the seculars were great numbers of unbeneficed clerks, especially chantry priests. The bishops were largely members of noble houses, and their reactionary spirit is shown by their treatment of Bishop Pecock, who would fain have been their champion; but he had made dangerous concessions, such as "even if the Apostles' Creed were not written by the Apostles, this need not destroy its value." The fact was, the mediæval system was still too strong to yield, especially when the Lancastrian dynasty came to the throne, based on aristocracy, conservatism, and orthodoxy. Under it was passed for the first time a statute *De hæretico comburendo*, 1401, which was given a still sharper edge in 1414 by empowering the justices to act on their own initiative. Lollardy had discredited itself by becoming communistic, but "trials of Lollards had not ceased when trials of Lutherans began," and undoubtedly Wyclif's teaching had prepared

Seculars *v.* Regulars.

the way for the Reformation. The monasteries were decadent. Waynflete and Alcock, Lady Margaret and Wolsey founded their colleges out of suppressed religious houses. Many were bankrupt; some derelict. The monks had gone on with the old agriculture. They were saddled with "corrodies," that is, pensions to officials or founder's kin. Men were turning to the foundation of colleges, hospitals, alms-houses, and schools, to the support of guilds for religious purposes, or to the building and decoration of the great parish churches, such as those which we still see in the eastern counties. Already before the Tudors the age of the laity had begun in the Church.

The spiritual and temporal, merely two aspects of one community.

It would be a mistake to regard the Middle Ages as a continual fight between spiritual and temporal. These were rather two aspects of one united community. Bishops and abbots, besides being great ecclesiastics, were also barons with feudal obligations and political duties. Prelates worked with lay officials as law makers, ministers, and judges. The parish priest joined with the reeve and four best men to represent his township. The parish church was the centre of local life. The layman was always also a member of the Church and took a large share in its work.

Church and State normally co-operate.

Thus the normal relation between the two powers in England was one of friendship and co-operation. This was aided by the comparative immunity, which England enjoyed, from rivalry between the theories of Church and State, a rivalry which took such acute form in the rest of Europe through the successive struggles between empire and papacy under Hildebrand, Innocent III., Innocent IV., and John XXII. This immunity was aided by other causes; the comparative absence of collisions between State and Church, as such; the common interest of both the nation and the clergy in practical resistance to the intrusion of foreigners into native benefices; the underlying assumption throughout English history that political institutions, the powers that be, are also ordained of God, the fact that ecclesiastical abuses, however notorious, were always balanced by such merits as those of the monks and the friars during their best days, and by the faithful ministry of the "poor parson of the town" throughout the later generations.

Growth of papal claims.

Speaking generally, the thirteenth, fourteenth, and fifteenth centuries witnessed a great growth of the papal claims with reference to the English Church and nation, a gradually increasing protest by both against those claims, especially in their aspect of money exactions, a consolidation of the regal power, and finally the development of Parliament. The Pope expected a good deal of material support from England. From Anglo-Saxon times a

penny for each hearth was exacted under the name of "Peter Pence." The first year's profits of bishoprics and benefices was for the first time in 1256 claimed by the Pope as First Fruits or Annates, and one-tenth of the annual income was demanded on the general principle of the Christian's duty to pay tithe. The Pope claimed under the title of "Provision" the right to nominate in advance the successor to any existing bishop or incumbent, and so to supersede, when the vacancy came, the right of the regular patron. He also claimed to "reserve" any benefice when vacant, for his own nominee to be disclosed in due course. These abnormal powers were in fact largely used in order to find lucrative posts for foreign officials, who were ill qualified as to capacity or opportunity for the discharge of responsibilities in this country. Under Edward III. (1351) and Richard II. (1390) "Statutes of Provisors" were passed to "prevent the Pope of Rome accroaching" to him dignities and benefices "to the annulling of the estate of the Holy Church of England." There were protests and promises on both sides, but the system continued, largely because, though unpopular with the clergy and people, it could sometimes be worked to the advantage of the king and individual nobles. From the time of John, but more definitely from that of Edward III., the Pope's bull was required for the confirmation of a bishop's election, and thus the Roman See had the power—not, it would seem, often exercised—to nullify an election made with the king's consent at home. From the time of Augustine's mission every archbishop of an English province received from the Pope the woollen vestment known as the "*pallium*," which was at first a mere mark of friendly recognition or equality, but which came to be regarded as a necessary symbol of the office, without which nobody could perform metropolitical functions. In addition, the Pope claimed to grant dispensations which allowed men to hold more than one benefice or bishopric at the same time, to hold spiritual office without possessing proper qualifications of age, birth, or orders, to contract marriages within the forbidden degrees of relationship, and to commit other ecclesiastical irregularities. These dispensations were often costly, and the fees exacted went to Rome or to Roman nominees.

Annates.

Statutes of Provisors.

Pallium.

Dispensations.

Final appeal from church courts to Pope.

The Pope was the court of final appeal from the church courts. The jurisdiction of the English Church courts included, as we have seen, not only directly ecclesiastical matters, but also testamentary and matrimonial cases. Wills were proved, the validity of marriages decided, and judicial separations decreed in the church courts. In all these cases it was competent for the suitor not only to appeal to Rome from a sentence which went against him, but he could at any stage of the litigation apply to have the cause removed altogether from the English ecclesiastical

court and dealt with by papal delegates, either here or at Rome itself. Under this head again money flowed into the Pope's coffers. This was objected to, and the delay and uncertainty gave further ground for complaint. It will be remembered that even so early as 1164 the abortive Constitutions of Clarendon had contained a clause prohibiting appeals to go "further" (*i.e.*, to Rome) without the king's assent.

King retains jurisdiction as to advowsons.

The rights of patrons of benefices, notwithstanding the most violent protest of the Pope, were (from the time of Henry II. onwards) firmly retained to be dealt with in the king's courts, while the church courts were prohibited from meddling with them. The Statutes of Præmunire (1353-1393) denounced the heaviest penalties against any who should seek to draw people "out of the realm to answer for things whereof the cognisance pertains to the king's court." Further, any who should purchase in the Court of Rome translations from one bishopric to another (as "according to common clamour" the "Holy Father" contemplated) or any "processes, sentences of excommunication, bulls, instruments, &c., which touch our Lord the King," were to be put out of the king's protection. If these statutes failed, as they did, to be thoroughly effective, it was partly because those who made them found it sometimes convenient to indulge in the practices against which they were launched.

Statutes of Præmunire.

English law benefited National Church.

With regard to the relation of the king and State to the Church, little need be added to what has already been said. The relations between the clerical and the legal professions have not always been very cordial. But in the centuries between the Norman Conquest and the Tudors much was done by the English law to benefit the National Church. By the beginning of the thirteenth century the parson had a legal remedy if his tithe was withheld. Glebes were largely given by landlords to the beneficed clergy, and the law upheld them in the possession of these lands. Church rate for the repair of the parish church was legally due and recoverable in the church court. The king's court enforced the sentences of the church court when they could not otherwise be made effective. The English common law, with the accommodating and reasonable character which it had during its period of growth, provided also a number of compromises very convenient for a body like the English Church, always in danger of a conflict between its two duties, the spiritual and the temporal. Such compromises already existed in regard to homage from prelates, benefit of clergy, freedom of election. Other compromises covered the case of tithe, the king's court adjudicating on the title, the church court ordering the payment; the case of the Præmunire legislation, where it was accepted that appeals to Rome on wills and marriage suits were not a contravention of the

statutes; the case of heresy, where the law undertook the punishment of heretics but left to the Church the definition and cognisance of heresy. There was also the case of trusts, the first stage in which was the device by which friars, since they could own no property, got it held for them by someone else *ad opus fratrum*. As it was an old and just boast that the law leant to freedom, so it might also be said the law leant to religion.

Freedom of king and realm asserted against the Pope.

In vain had the revived papacy after the Council of Constance made an effort to recover its hold upon England. Martin V. insisted that Archbishop Chichele should promise the repeal of the Statutes of Provisors, under pain of losing his position as legate. But this was more than the archbishop could procure or the Pope enforce. The Parliament of 1399 had declared the Crown and realm to be so free that the Pope could not interfere with it; this principle had become very real fact long before Henry VIII.

But from the mission of Augustine to the time of Cranmer is nearly a thousand years.

Tendencies developed during Middle Ages.

In that long period certain tendencies had been clearly developed:—

(1) Rome had done its work and the time had come for national churches.

(2) Monasticism too had done its work, had become parasitic, and must go.

(3) The action of the church courts, in their aspect of police tribunals, had come to be an offence to the moral sense of the community.

(4) A better educated laity demanded the Scriptures in English and an English liturgy, as well as other ritual changes.

(5) A deep consciousness had come that the State itself is ordained of God, and in its sphere a Divine institution.

These are the various aspects which made up the movement we call the Reformation. It was no abrupt break with the past, but a working out of historical tendencies which are traceable in varying degrees throughout the whole period.

The Reformation.

So matters stood as between the king, the Parliament, the Church of England, and the Pope, until Henry VIII.'s breach with Rome. It was a partnership not very easy, not very exactly defined, but of long standing. Then suddenly, within the space of a few months, the Pope entirely disappeared out of the partnership. In 1534 the Convocations solemnly resolved that "the Roman

Pontiff" has no "greater jurisdiction bestowed on him by God in the Holy Scriptures in this realm of England than any other foreign bishop." A month or two later Henry issued a proclamation for abolishing the usurped power of the Pope. The legal severance was carried out by a series of Acts of Parliament, some before and some after those fateful utterances. "This realm of England" was declared to be an "empire governed by one supreme king to whom a body politic divided by the names of spirituality and temporalty ought to bear, next to God, a humble obedience: he being furnished with power and jurisdiction to render justice to all subjects within his realm in all causes occurring therein without restraint or provocation to any foreign princes." The spirituality "now being usually called the English Church" was declared to have power when any cause of the law divine or of spiritual learning happened to come in question, to "declare interpret and show it"; for which task the spirituality was stated to have been always reputed and found to be sufficient "without the intermeddling of any exterior person."

Ecclesiastical jurisdiction and courts.

Appeals to Rome in testamentary and matrimonial matters and cases concerning rights of tithe were abolished (1533), and in the next year "all manner of appeals of what nature or condition soever they be of" were similarly dealt with. Appeals from the archbishop's court for lack of justice were to be heard by the king in Chancery (Court of Delegates) in lieu of the Pope. The papal canon law was not to be recognised as such, but as having validity as custom, so far as it had by long use acquired a prescriptive authority. With the consent of the Convocations, the existing canons were to be revised by a Royal Commission, pending which —and the proposed revision was never completed—their validity was conditional on their being consistent with statute and common law and the king's prerogative. The Submission of the Clergy (1532) embodied in the Act 25 Henry VIII., cap. 19, had also provided that no new canons should be made unless (1) the Convocations are assembled by the king's writ; (2) the king gives his licence for the making of canons; (3) the canons so made have the royal assent. These are the conditions which still control the Convocations.

Canon law.

The pre-Reformation canon law, so far as it had been accepted in England and has not since been abrogated by statute, is still binding on clergy and laity alike. Later, an important series of disciplinary canons was passed by Convocation in 1571, but did not receive the assent of the queen. Other canons were made in 1575, 1585, and 1597, and were assented to by the queen in a form which was effectual only for her life. In 1603 "the Canons," as they are called, were enacted by the Convocations and received the assent of James I. They are largely repetitions and enforce-

ments by penalty of earlier canons and other laws. The Court of King's Bench decided (1736) that the Canons of 1603 do not *proprio vigore* bind the laity. In 1610 James I. refused his assent to a draft series of dogmatic canons "concerning the government of God's catholic Church and the kingdoms of the whole world," being, in fact, decisions on questions of doctrine and scriptural interpretation (Bishop Overall's book) which had been adopted by Convocation. From 1717 to 1854 the Convocations were practically in abeyance. Since their revival several alterations in "the Canons" have been enacted for the purpose of bringing them into agreement with statutes.

Abolition of papal exactions.

Annates (*i.e.*, first-fruits*) and other fees paid at Rome by newly appointed bishops and archbishops were taken away (1532, 1534), and no bulls or briefs were to be procured from Rome, or used here. Bishops were to be nominally elected by the chapters, who were, however, to choose the king's nominee. Elections were to be confirmed by the archbishop of the province without a bull from the Pope, and archbishops were no longer to apply to the Pope for the pall, or to accept it from him. Peter Pence and all other "impositions" to the use of the Bishop of Rome were forbidden (1534). Papal dispensations were not to be sued for. The Archbishop of Canterbury was empowered to grant such as were not "repugnant to the Holy Scriptures and the laws of God" (1534).

Dissolution of monasteries.

The dissolution of the monasteries (1535-1539), closely connected with the rejection of the papacy, had this result, amongst many others which do not directly affect our actual subject, that it greatly diminished the number of ecclesiastics in the House of Lords. Twenty-seven or twenty-nine members of the House disappeared with the withdrawal of the abbots. With the disappearance of the abbots came a large increase in the number of lay peers. Many of the new lords were endowed out of monastic property. There were thirty-six lay lords in the first year of Henry VIII., and eighty-one in the last year of Elizabeth. The Church is now represented in the House of Lords by the two Archbishops, the Bishops of London, Durham, and Winchester, and twenty-one other diocesan bishops in order of seniority.

Ecclesiastical statutes increased.

The abrogation of the papal authority was accompanied by a marked increase in the number of Acts of Parliament dealing with church matters. Moreover, from this time until the expulsion of James II. the sovereign exercised a personal authority with regard to the Church which profoundly affected every department of its

* First-fruits and Tenths were almost immediately (26 Henry VIII., ch. 3) given to the king. Queen Anne (1704) restored them to the Church to be administered (as they still are) by Queen Anne's Bounty.

life, and was all the more potent because it existed under a clear statutory title without any precise limitation of its range. The royal supremacy received more definite and emphatic expression than heretofore. By the Supremacy Act, 1534, the king was described as "the only Supreme Head in earth of the Church of England with full power to visit . . . . reform, &c., all heresies, abuses, &c., which by spiritual authority ought to be reformed." Elizabeth (1559), described as "Supreme Governor of this Realm" rather than "Supreme Head in earth of the Church of England," had a not less full disciplinary authority under her Supremacy Act. The chief purpose of the Act was to exclude foreign jurisdiction and to assert the supremacy of the Crown in all causes as well ecclesiastical as temporal. The royal supremacy was mainly exercised by visitations superseding for the time being those of bishops and archbishops, by injunctions and proclamations treated as having binding legal force, by the Court of High Commission superseding the church courts and by Commissions of Review, revising cases which, but for the intervention of the sovereign, had been finally decided by those courts.

Royal supremacy.

In contrast to the State's pre-Reformation attitude of non-interference with the actual definition of Christian doctrine, Elizabeth's Supremacy Act (1559) enacted that nothing was to be adjudged to be heresy except what had already been so adjudged by the authority of the Canonical Scriptures or of the first four General Councils or of any other General Council (supported by express words of Scripture) and except what should hereafter be adjudged to be heresy "by the High Court of Parliament of this realm with the assent of the clergy in their Convocations."

State's new attitude towards doctrine and worship.

The Liturgy and public services of the Church have from 1549 to the present time been prescribed by successive Acts of Uniformity (1549, 1552, 1559, 1661, 1870). The existing Prayer Book was prepared by Convocation and was not altered by Parliament.

Acts of Uniformity.

The Thirty-nine Articles of Religion published by Convocation in 1563 with the queen's authority, subscription to which by the clergy was made obligatory by Act of Parliament in 1571, constitute, together with the Prayer Book, the formal statement of the Church of England's teaching as recognised by the State.

Thirty-nine Articles.

In all these changes the Crown had the body of the nation at its side, and it was emphatically a work through and with the laity.

Crown and nation agreed.

The relation of the Church to the nation in the Tudor period was somewhat obscured and confused by the party divisions on ecclesiastical matters, both in Church and nation, by the dread of Rome-ward reaction and by the rise and growing separatism of the Puritan movement. But to counterbalance these a great

Growth of national loyalty to Church of England.

national loyalty to the Church, as established, grew up under Elizabeth, increased under the Stuarts, and lasted well on into the eighteenth century.

State control under the Tudors.

Under the Tudors the State finally secured that control over ecclesiastical legislation, ecclesiastical jurisdiction, and elections to the higher ecclesiastical offices which it had been claiming with increasing success from the Anglo-Saxon period. During the same period the Church of England's sense of its own corporateness was developed under the heavy hand of royal power, also by resistance to Puritanism and by the growth of Anglican theory and sentiment. This sense was still further developed into an intense consciousness in the seventeenth century, particularly by the troubles experienced under the Commonwealth and James II.

The parochial system.

So far as the legal features of the parochial system are concerned, the Reformation introduced no change. Parishes and the mutual rights and duties of parson and people grew into existence in very early times. Archbishop Theodore used to be regarded as the founder of the parochial system, but "it needed no foundation." The parish was but the village or township to which a priest ministered. The incumbent with cure of souls was a natural development, and to him the ecclesiastical dues and generally also the tithes of the parish were and are paid. Until the thirteenth century a landowner could, and often did, "appropriate" his tithes to some monastery or secular house in which he felt an interest, and thus alienated them from his parson. At the Reformation tithes so appropriated were not restored to parochial clergy, but passed into the hands of the lay grantees of the abbey lands. The parishioners, through the vestry, of which they are members, and the churchwardens, in whose election they participate, formerly had, and still have, considerable control over ecclesiastical parish business. The liability of parishioners for rates to keep the church in repair has been already stated. They have always possessed a parallel right to be present in Church at the public services. The incumbent has from early times been under obligation to baptise infants, to admit parishioners (unless unbaptised, unconfirmed, excommunicate, or notorious evil livers) to Holy Communion, to solemnize their marriages, to visit their sick, and to bury the dead dying within the district in the churchyard or other parochial cemetery. Parishioners have a legal right to demand from their parson these and all other ministrations belonging to the cure of souls. Fees are generally payable to him in respect of marriages and burials. These are due by common law, but statutory powers of creating and regulating such fees were enacted in the nineteenth century.

Temporary changes.

During the nearly four centuries which have passed since the

breach with Rome there have been some important changes in the relations of Church and State which are not of great moment for our present purpose because they have been temporary. Thus the revival of the papal power in Mary's reign, the suspension of the Church of England's activities during the Commonwealth, the virtual suppression of the ecclesiastical courts in Edward VI.'s reign with its resultant moral anarchy, and the existence for nearly a century, under statutory authority, of the Court of High Commission (1559-1641) already mentioned, are matters of the first historical importance, but they do not greatly affect the present relations of Church and State.

Taxation of the clergy.

Another change, and one by which power formerly acknowledged to belong to the Church itself passed into the hands of Parliament, concerns the taxation of the clergy. The case of Archbishop Winchelsey and Edward I. (1297) has already been mentioned, and from that time until the seventeenth century the practice was regularly followed by which the clergy paid taxes in respect of their benefices in the form of subsidies voted by the Convocations at the request of the king. But in 1664, by arrangement between Archbishop Sheldon and the Lord Chancellor (Clarendon), this practice was waived, and since that date the clergy have been taxed, like the laity, by the House of Commons.

Toleration.

The change of most far-reaching consequence to the relations of Church and State which has happened since the Reformation was the grant of toleration to Nonconformists (1689), after the Revolution, on the accession of William and Mary. Until that date conformity to the Church of England was a matter of legal obligation. Since that date the Church of England has been one of many religious bodies all of which are under the protection of the law, though the Church has special duties and privileges and is subject to State control not shared by the rest. The series of changes to which the introduction of the principle of toleration was the prelude gradually changed the character of Parliament by admitting to it persons of any, or of no, religious profession, and it ceased to be an assembly of churchmen.

Parliament the heir of the royal supremacy.

The direct intervention of the sovereign in church affairs largely disappeared after 1689. The personal monarchy giving way to "constitutional" government, Parliament became the heir to much of the royal supremacy. It might seem that this would mean the community entering into more open control of its own Church, with a consequent increase in the functions of the laity. But it was not so. The changes which "toleration" produced, especially in Parliament itself, had a precisely opposite result. The direct influence of the church laity upon the government of church affairs was minimised almost to the point of obliteration.

Ecclesiastical legislation.

The volume of church legislation in Parliament which, as already stated, suddenly increased when the breach with the papacy took place, was markedly smaller in the later years of Elizabeth and in the next two reigns. After the Restoration it grew again, until under George III. it became very considerable, and so continued throughout the first three-quarters of the nineteenth century. Such administrative machinery as the Church of England possesses has been built up by Parliament, and largely during the period 1818-1885. At the time of the agitation for Parliamentary reform which led to the Reform Act of 1832, the condition of the Church of England, the unequal distribution of its revenues, the tithe system and church rates attracted the bitter criticism of enemies and the anxious consideration of friends. Royal commissions were appointed to suggest reforms, and bishops and other leading churchmen took a large share in the work of these bodies. Much of the ecclesiastical legislation in Parliament which followed was directed to carrying out the schemes thus formed. The erection of new bishropics; the creation of new, and the sub-division of old, parishes; the restraint of pluralities; the leasing and sale of glebe; the substitution of tithe rent-charge for tithes in kind, and its redemption; the abolition of sinecures and the better employment of their endowments, as well as of other ecclesiastical revenues; the creation of the Ecclesiastical Commission to administer these transferred funds; the resignation on pension of disabled incumbents; dilapidations, and a multitude of other matters have been the subject of a mass of legislation without which it is difficult to conceive how the Church of England could have done its work during the last two generations. For at least thirty years it has grown more and more difficult to procure the passage of church Bills through the House of Commons. But it should be added, on the other hand, that there has been an increasing disposition to regard the consent of the Church itself, through Convocation or otherwise, as a fitting preliminary to such Acts as have been passed. From the sixteenth century onwards legislation affecting the doctrine or worship of the Church has been effected in some cases, though not in all, with the concurrence of the Convocations.

Administrative machinery of Church built up by Parliament.

Inconsistencies between statute and church law.

Another and more grave development of recent times has been the passing of Acts of Parliament which tend to create actual inconsistency between statute law and the rules and practices of the Church of England as a spiritual society. The Clerical Disabilities Act, 1870, provides for the relinquishment of Orders by a clergyman and his exemption from ecclesiastical censures, notwithstanding the canonical prohibition against such relinquishment, probably based on the view that the spiritual effects of ordination are indelible. In 1857 Parliament made it possible for married persons to obtain, under certain conditions, divorce *a vinculo*,

legalised the re-marriage of divorced persons, and provided for such re-marriage according to the rites of the Church, although the Church of England itself has never varied from its ancient refusal to admit the possibility of divorce. In 1907 Parliament legalised marriage as a civil contract with a deceased wife's sister, but the ecclesiastical rules, which had rendered such marriages void, remain unaltered. In these two latter instances Parliament has legislated in a manner which brings rights conferred by the State into possible conflict with duties which the clergy may regard as imposed on them by the Church.

Statutes affecting position of the Church in the nation.

There have also been Acts of Parliament which have affected the position of the Church of England either directly, by taking away exclusive rights, or indirectly, by extending similar rights to other religious bodies. To the first class belong the abolition of church rates (1868), and the removal of university tests (1871); to the second, the civil and nonconformist marriage Acts (1836, &c., 1898), and the use of rites other than those of the Church at burials in churchyards (1880).

Ecclesiastical courts.

The ecclesiastical courts have seen great changes since the Reformation, and especially during the last century. The law of the Church which they administer is still part of the law of the land (not foreign law to be ascertained by evidence), and the church courts themselves are in many striking respects the same as those which followed William the Conqueror's separation of the spiritual business from the Hundred Courts nearly nine hundred years ago. But the extent of their jurisdiction and the volume of their business have greatly diminished. Testamentary and matrimonial matters were in 1857 removed by Parliament from the ecclesiastical courts and vested in State courts created for the purpose. The jurisdiction of the church courts over the laity, formerly so constantly exercised that they filled, and more than filled, the place of modern police courts, has wholly disappeared. Defamation, brawling in church or churchyard, and sexual immorality have ceased to be ordinarily cognisable in church courts. Brawling has become a civil offence. Clergy discipline and the care of consecrated buildings are now substantially the only concern of the church courts.

Their procedure affected by modern statutes.

The procedure of the church courts has been affected in certain respects by modern statutes. In cases of clergy discipline the Church Discipline Act, 1840, and the Clergy Discipline Act, 1892, introduced important modifications. The Public Worship Regulation Act, 1874, created a new machinery, supplemental to the normal procedure, to deal with a special class of case. The civil penalties of excommunication were abolished (1813), while excommunication itself as a spiritual censure was retained. An Act

of Parliament (1854) made oral evidence for the first time possible in ecclesiastical courts.

The final appeal from church courts.

The final appeal from the church courts to the Crown constituted by 25 Henry VIII., cap. 19 (Court of Delegates) was changed in 1832 so that appeals went to the Privy Council, and later (1833) to the Judicial Committee of Privy Council, which itself has been modified in various respects by subsequent statutes. A new tribunal was created by the Benefices Act, 1898, to hear appeals against the refusal of a bishop to institute a clergyman presented to a benefice.

Decisions of church courts and of the Judicial Committee widely ignored.

The decisions and powers of the church courts, and still more of the Judicial Committee, have been the subject of much controversy in recent years, and in many respects these decisions are in fact widely ignored. A grave situation has been the result. It has not been possible to effect a remedy by legislation. The difficulties arising from this state of things are among the chief reasons why it has become urgent to consider the relations between Church and State.

Church legislation at a standstill.

With regard to Parliament in its connection with the Church of England, two conclusions emerge from what has been stated. First, it is apparent that, as matters stand, church legislation is impracticable without the action of Parliament. Secondly, the constitution of Parliament prevents its being in any true sense representative of the Church, and the experience of recent years has shown that it possesses neither time nor inclination nor knowledge for dealing with ecclesiastical affairs.

The present legal relations of Church and State may be summed up as follows:—

The King and the Church.

The royal supremacy is declared by Elizabeth's Supremacy Act and is defined by the Thirty-seventh Article.

The King possesses the nomination to archbishoprics and bishoprics, and the nomination to the deaneries of cathedral and collegiate churches, and enjoys other church patronage.

The King exercises the powers of control over Convocation described above.

It is a condition of the title to the throne that the King should "join in communion with the Church of England as by law established."

The coronation of the King by the Archbishop of Canterbury is a religious service at which the King takes an oath that he will "maintain and preserve inviolably the settlement of the Church of England and the doctrine, worship, discipline, and government thereof as by law established in England."

An important feature to note in the relation of the King to the Church is that, in exercising his powers with regard to it, he acts on the advice of his Ministers for the time being.

Parliament and the Church.

The Prayer Book and the Articles being recognised by statute, the consent of Parliament is necessary to any change in the statements of doctrine or form of worship of the Church of England.

The same is true as to every part of the legal, constitutional and administrative fabric of the Church which is at the present time regulated by statute law.

The Convocations do not depend on any statute for their constitution, but on custom. To alter the custom it would appear necessary to have the assent of Parliament as well as of the Convocations.

The Bishops, to the extent mentioned above (p. 20) are members of the House of Lords. Clergymen are not eligible for membership of the House of Commons.

The Judicature of the Church.

The church courts administer the ecclesiastical law, which is recognised as part of the law of the land. Their powers are confined to certain spiritual or ecclesiastical matters as above explained. But as to these matters they have a recognised jurisdiction; if they exceed it they are liable to "prohibition" from the King's courts. Further, any litigant who complains of lack of justice in the archbishop's court may appeal to the King, that is, to the Judicial Committee of Privy Council. The church courts are controlled in their procedure and practice by numerous Acts of Parliament.

The People and the Church.

Lay parishioners are legally entitled to the use of the parish church for public worship and administration of the Sacraments, and to the services of the incumbent for these and all other ministrations comprised under the term "cure of souls."

Lay parishioners, through the vestry and through the churchwardens, are entitled to some control of ecclesiastical parish business.

III.

WORKING OF THE PRESENT SYSTEM OF CHURCH GOVERNMENT.

Vitality of the Church at the present time.

In considering the present system of Church Government in the Church of England we desire at the outset to dissociate ourselves from the view that its dependence, in the matter of legislation, and all that legislation implies, upon the will of a political assembly, has in the past been incompatible with a large measure of spiritual efficiency. A sufficient proof to the contrary is the vitality of the Church at the present day. On every side there is evidence of life within the Church wherever the informing spirit of devotion and enterprise, which actuates the body, finds free scope. No better illustration of this can be found than in the missionary spirit manifested both at home and abroad, and in the ever-increasing volume of energy and conviction that assails modern indifferentism. It would be wholly untrue to suggest that the connexion of the Church with the State is confining it in the trammels of a dead officialdom. The demand for a fuller concession of spiritual independence is, in itself, a proof to the contrary. But this does not imply that the system is incapable of improvement. We believe that the organisation through which the Church has to do much of its work has not developed in correspondence with its vitality. In many respects a strain has been set up between the vital energies of the Church, put forth to meet new and pressing needs, and the restrictions and regulations which it has now outlived and outgrown. Such a strain, though severe, was tolerable in a period of transition; but it would be intolerable that it should continue; and, indeed, in many departments of church life it has reached a point where the demand for relief can no longer be ignored.

The House of Commons as an ecclesiastical legislature.

The Church, as an institution inherently progressive and self-developing, is fully conscious of its need of reform. It finds one of its main grounds for condemning the present system in the fact that this system presents grave obstacles to any really effective reform. The House of Commons is a political assembly, and open, very properly, to all citizens, whether members of any religious denomination or not. On this score the objections to the House as an ecclesiastical legislature are obvious, and do not require detailed

explanation. Generally speaking, the attitude of the House of Commons towards church legislation is not so much one of hostility as of indifference, and of unwillingness to act, due in part to the realisation of its unfitness to deal with religious affairs. But the inefficiency of the House of Commons as a legislative body on church matters is also due to lack of time. The congestion of secular business alone is very great, and it appears increasingly unlikely that any Government, brought into power under modern democratic conditions, and overwhelmed with matters which call for legislative action, will have leisure for detailed consideration of church questions. Under these conditions it seems inevitable that a House which has no longer as a body any special interest in the Church will from the circumstances of its existence be inclined to neglect ecclesiastical legislation. Measures of subordinate interest, such as Bills affecting religious bodies and introduced by private members, enjoy under present Parliamentary conditions slight chance of success. The results of an examination of the Public Bill Lists for the years 1880-1913 made by one of our members are very striking. According to his computation, out of 217* church Bills, some of them dealing with very important subjects, introduced into the House of Commons during that period, 33 were passed, 183 were dropped, and one only was negatived. Of 74 Bills dealing with subjects of interest to Nonconformists, 38 were designed to alter the law in their interests, and the other 36 were concerned with trust deeds of chapels; one only of the former class and 24 of the latter class were passed, while 49 Bills were dropped. Of the church Bills 162 were never discussed at all; of the 33 which became law, 13 were directly sponsored by a member of the Government of the day, and all the rest probably owed their passage to assistance of some sort from the Government. It appears from this examination that the conditions that unfit the House of Commons for ecclesiastical legislation operate in the case both of established and of non-established bodies. It is of course true that the amount of legislation required by the Nonconformists is smaller than that required by the Church of England, and that in that sense they are less hampered by Parliamentary interference; but it seems also to be true that the grievance of these bodies, although admittedly less in degree, is analogous to that of the Church of England. We shall be glad if our labours result in setting a precedent of which Nonconformists can take advantage.

The need for change.

The Church is therefore confronted with two broad facts; first, that Parliament has confined it in every department of its con-

* In this calculation Bills on the same subject re-introduced in different sessions are reckoned as separate Bills.

stitutional existence within statutory bars which Parliament itself alone can break or reshape; and, secondly, that Parliament is no longer fitted to legislate for the Church. The changes which began in the sixteenth century have gone on ever since unregulated and unchecked, and we submit that the time has come to arrange the relations of Church and State on a more elastic and rational basis.

IV.

THE PRINCIPLE OF SPIRITUAL INDEPENDENCE.

Church must be given a greater measure of autonomy.

There can be no question that the solution of the difficulties that we have described must be found in securing to the Church liberty to perform the functions which it alone is competent to undertake, and transferring to it work which Parliament can no longer adequately perform. This is justified not merely as a practical way out of the difficulty, but also by the fundamental conception of the Church as a self-governing society, ready and able to co-operate with the civil power, but maintaining its independent existence, and rejecting the notion that it is in any sense a mere "organ of the State."

The principle of spiritual independence.

We desire in this section to offer a few observations on this principle of Spiritual Independence; for the strength and tendency of the present movement for the constitutional reform of the Church cannot be understood unless the reasonableness of the principle which inspires and directs it is properly appreciated. The propositions which we advance seem so elementary and so self-evident that perhaps we should not have thought it necessary to restate them had not prevailing political opinion in England, until quite recent times, been unwilling to recognise them.

The laity in the Church.

It is of great importance to make it plain that when we are pleading for the restoration of autonomy to the Church, we mean the Church and not only the clergy. It is quite true that over great reaches of church history the government of the Church has been mainly in the hands of the hierarchy; "the rights of the Church" have meant the rights of the hierarchy; an "ecclesiastic" has meant a clergyman, and "to go into the Church" to take Holy Orders. This identification of the Church with the hierarchy has been due to various causes; to the social system in which the Church has become embedded—imperialistic or monarchical or aristocratic, to the love of power on the part of the clergy, and (not least) to the apathy of the mass of the laity. But from the beginning it was not so. Until the Church was closely associated with the empire, the whole body of the faithful was recognised as concerned in the government of the Church.* In the later Roman Empire and in the Middle Ages, and in aristocratic England, emperors and kings and great landowners retained a great share of power which may under a different

* See Convocation Report, 1902 (No. 367), "On the Position of the Laity," and Rev. R. B. Rackham's essay in *Essays on Church Reform* (published 1898; revised issue 1915).

social system be restored to the laity generally. Even in the later Middle Ages in England it seems to have been the case that the laity in the parishes retained a considerable share of power in the parochial vestry: so much so that the English capacity for self-government seems to have been to no inconsiderable extent nourished in parochial administration. While we seek to retain for the clergy their special function in the administration of the Word and Sacraments, we desire to restore to the whole body of church members its original position of authority; and we wish, therefore, at the outset, to call attention to the fact that when we speak of the restoration to the Church of its proper autonomy, we mean by the Church not only the clergy, but the whole Church in which every member has his vocation and ministry in virtue of those gifts of the Spirit of Christ which make all Christians "a kingdom and priests."

The right of a society to govern itself.

The Christian Church has from its beginning claimed to be the prepared and chosen instrument for carrying out in the world the purpose of its Founder—to be the visible organ or "body" of Christ, indwelt and guided by His Spirit. It must needs, therefore, claim the liberty of self-expression and self-maintenance which the fulfilment of its essential function demands. It may indeed be said to be an axiom of government that a society, founded with certain objects, and requiring certain qualifications in its members, must possess an autonomy adequate to promote the attainment of those objects and the fulfilment of those qualifications. There is nothing to surprise us in the fact that the assertion of its own autonomy by the Church, and the acceptance of the authority of the society by its members, are traceable to the first period of its existence. "The original principle of spiritual independence and spiritual authority in the Church is to be found in the New Testament and in the literature of the Early Church, and was brought into prominence in the early relations of the Church to the Empire."* And this claim is not based merely on convenience or practical necessity. It does not seem to be open to question that the authority to bind or loose, with which the Church believed itself to be endowed from the beginning of its history, was interpreted as involving the possession of the full legislative and administrative and judicial powers which the effective realisation of such an authority demanded. Behind such questions as those of the relations of the different elements of the Church to one another, of the relation of local churches to the whole Church, or of the limitation of the authority of even the whole Church in matters of doctrine, lay "the idea of the Church as a self-governing society, having authority over its members

* "Memorandum on the Fundamental Idea of the Spiritual Independence of Church" (Appendix No. VIII.).

with divine sanction, having a divine claim to govern itself. Such it conceived itself to be, and by this very fact it was liable from the first to come into conflict with the great state in which it found itself, the Roman Empire."* From the moment of that collision the question of the relations between Church and State emerged, and it has continued to exist in various forms down to the present time.

The authority of the State recognised by the Church.

But while the Early Church asserted its spiritual independence, it made no attempt to claim unlimited authority as against the State. "On the contrary, through the lips of St. Peter and St. Paul, it recognised the divine commission of the secular authority, the Roman Empire. That, it held, was of divine institution, and its officers had authority by divine appointment for the maintenance of civil justice and order. Thus there was in the Early Christian Church the clearest recognition that human life is under two authorities, wholly distinct in sphere and both divine—the State and the Church."† In the minds of the Early Christians "there was no risk of confusion. They asked only for such spiritual independence as was wholly compatible with the full recognition of secular authority."‡ These two principles, the assertion on the one hand of the spiritual independence of the Church, and the recognition on the other of the claims of the civil power, are still the only possible foundations of the relationship of Church and State. As such they have perforce been recognised in one shape or another during the whole of the Church's history, and remain the necessary basis for any discussion of the subject to-day.

The phrase "Spiritual Independence" variously expressible in terms of law.

The powers exercised by the Christian Church in virtue of its claim to spiritual independence have varied according to the circumstances of each particular period and nation. But these powers have throughout shown themselves capable, sooner or later, of constitutional or legal definition, whether they have had to do with matters of doctrine, or administration, or judicature, or property.

Examples:—

(1) The other Churches of the Anglican Communion.

It is not possible to lay down any rule as to the measure of autonomy that constitutes effective spiritual independence in a particular case. The various solutions of this problem that have been attempted have largely depended upon circumstances of time and place and upon the religious history and character of the polity concerned. An examination, for instance, of the constitution of the other Churches of the Anglican Communion§ shows a great variety

* "Memorandum on the Fundamental Idea of the Spiritual Independence of the Church" (Appendix No. VIII.). † *ibid.* ‡ *ibid.*

§ See "Memorandum on the other Churches of the Anglican Communion" (Appendix No. IV.).

of forms of State relationship. First in point of importance is the great branch of our Communion in the United States of America. The Church there became from the date of the Declaration of Independence, and has ever since remained, an independent and voluntary association, only recognised by the State in the same way as all other religious bodies are, in so far as they come within the cognisance of the law of the land. In the United States of America there has never been an Established Church.

The Church of Ireland, from the date of its disestablishment in 1869, became a completely autonomous Church, stating its position in the preamble and declaration of its constitution adopted by the General Convention held in Dublin in 1870, and governed by its own constitution and canons.

The Episcopal Church of Scotland, once established, but finally displaced from that position at the end of the seventeenth century, is in the full sense a self-governing Church.

Many of the old Colonies began with established Churches; these Churches were originally constituted under royal letters patent, and endowed or assisted (exclusively or concurrently) with state grants. Most of these communities worked out their independent political development at a period when the severance of the religious and civil life of a nation, by means of disestablishment, was the favoured solution of the problem of Church and State. The result was that, with two exceptions, the important one of the East Indies, to which we refer later, and the interesting one of Barbados, these Churches erected constitutions of their own, and are now non-established. Many, however, are still affected by state laws resulting from their earlier establishment and endowment, and are tied either by the terms of their legal recognition or by those of their own constitutions in matters of property and contract. At the same time it is generally true to say that they have attained a large measure of autonomy, which takes effect in the shape of synodal action, as exercised by General, Provincial and Diocesan Assemblies. These bodies possess under their constitutions and canons full legislative power, arrange parochial patronage, appoint bishops, erect ecclesiastical tribunals, fix the boundaries of dioceses and parishes, constitute cathedral and capitular bodies, enforce discipline, and generally direct the policy and the administration of their particular Church. These powers undoubtedly carry these Churches a long way on the road to spiritual independence.

The Church in the East Indies, on the other hand, which has in recent years been constituted by ecclesiastical arrangement into the ecclesiastical province of India and Ceylon, remains a branch of the Church of England as by law established. Its metropolitan, the Bishop of Calcutta, is "subject to the general superintendence and revision of the Archbishop of Canterbury for the time being" (3 and 4 Will. IV., c. 85, sec. 94), but neither

bishops nor clergy have place in the Convocations of the Church of England.

The letters patent under which the Dioceses of Calcutta, Madras, and Bombay were constituted remain in full force though the circumstances in which they were issued have very largely changed. The ecclesiastical province has no existence in law; and no effective synodal system for the East Indies, with the consequent machinery, can be set up without the sanction of the Crown in Parliament.

Subject to this important exception, it may generally be said that in the Anglican Communion outside England, alike in the United States of America and in the British Empire, the Churches possess autonomy.

(2) The Established Church of Scotland.

A more remarkable illustration of the principle of spiritual independence is offered by the Established Church of Scotland.* It is not suggested that the case of that Church is identical, either in its history or in its present position, with that of the Church of England. The spiritual independence enjoyed by its General Assembly is without doubt largely to be ascribed to the circumstances of its origin, to the fact, namely, that the Scottish Reformation was carried through in the teeth of state and official opposition, that its constituent assembly neither asked for nor required royal authority, and that its strength, in a greater degree than in the case of the Church of England, was based upon a general consensus of Scottish religious opinion. The settlement in the sixteenth century was made not by a government, but by a people; and the constitution after the Revolution was only ratified and confirmed by the State. It nevertheless remains true, in spite of the large measure of autonomy which it has enjoyed, the crises through which it has passed, and the presence of other religious bodies, that it has been able for more than 200 years to maintain itself in its position of free establishment without danger to, and indeed with great benefit to, the State. This in itself constitutes a refutation of the view that establishment and liberty are incompatible, or that establishment is in principle an unsound foundation for any religious institution. What is equally noticeable is the reaction that has followed the secession of 1843. In recent years the desire for reunion between the United Free Church and the Church of the Establishment has made remarkable progress, and there seems reasonable ground for believing that it will be achieved. Among the most striking products of this movement are undoubtedly the "Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual," which the Committee

* See "Memorandum on the Established Church of Scotland" (Appendix No. V.).

of that Church appointed to confer with the representatives of the United Free Church have drawn up. We beg leave to quote in full the most important passages of this document.

After declaring the Church of Scotland to be "a branch of the Holy Catholic and Universal Church," and affirming its adherence to the principles of the Protestant Reformation as embodied in the Westminster Confession of 1647, and its historical continuity with the Church as reformed in 1560, the Articles go on to affirm that—

> "As national it is a representative witness to the Christian faith of the Scottish people, and acknowledges its Divine call and duty to bring the ordinances of religion to the people in every parish in Scotland through a territorial ministry." (Article III.)
>
> "The Church of Scotland, while acknowledging the Divine appointment and authority of the civil magistrate within his own sphere, and holding that the nation acting in its corporate capacity ought to render homage to God and promote in all appropriate ways the interests of His Kingdom, declares that it receives from its Head and from Him alone the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution of its courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its ministers and other office-bearers." (Article IV.)
>
> "The Church affirms that recognition by civil authority of its separate and independent government and jurisdiction in matters spiritual, in whatever manner such recognition be expressed, does not in any way affect the character of this government and jurisdiction as derived from the Divine Head of the Church alone, and not from any civil authority, or give to the civil authority any right of interference with the proceedings or judgments of the Church within the sphere of its spiritual government and jurisdiction." (Article V.)
>
> "The Church has the inherent right, free from interference by civil authority, but under the safeguards for deliberate action and legislation provided by the Church itself, to declare the sense in which it understands its Confession of Faith, to modify the forms of expression therein, or to formulate other doctrinal statements, and to define the relation thereto of its office-bearers and members, but

always in agreement with the Word of God and the fundamental doctrines of the Christian faith contained in the said Confession, of which agreement the Church shall be sole judge, and with due regard to liberty of opinion in points which do not enter into the substance of the faith." (Article VI.)

The remaining Articles affirm the right of the Church to unite without loss of its identity with any other Church on terms consistent with the Articles; to interpret the Articles, and subject to the necessary safeguards, to modify and alter them; and declare its "acceptance of the Word of God as the supreme rule of faith and life," its "fidelity to the fundamental truths of the Christian faith, and its intention to maintain Presbyterian Church government."

The breadth, completeness, and uncompromising character of this Declaration make it one of the most remarkable expositions in modern times of the meaning of spiritual independence, and it furnishes, together with the constitutional systems of other Anglican Churches, a standard of comparison by which the present position of the Church of England in the matter of autonomy may be estimated.

The movement for spiritual independence in the Church of England.

It would be surprising if the members of the Church of England had remained indifferent to the movements in favour of religious autonomy which for three-quarters of a century have been in progress around them. It is a matter of common knowledge that the opposite has been the case. The demand for a larger measure of spiritual independence on the part of the Church became perceptible at least seventy-five years ago as the result of converging influences of many kinds. The need of church reform in various directions, especially in those of equipment and finance, had of course been recognised, and in part realised, earlier; but the demand for a readjustment of the relations of Church and State arose from the enhanced consciousness of spiritual and corporate life in the Church of England. It was natural that this sense of renewed vitality should seek for some means of expression; and the insistence of churchmen, on spiritual and corporate grounds, on the necessity of a larger degree of liberty, received additional impetus from the study of church history, and from the actual circumstances of the time. On the one hand the pressure of disciplinary troubles, of the need of church expansion and of the removal of abuses; and on the other the growth of Parliamentary conditions which tended to hamper the passage of ecclesiastical legislation, combined to supply the reformer with practical arguments and illustrations. Down to the present day the desire for larger powers of self-regulation has continued to play an active part in all movements for

the reform of the Church. In the plans of reform which have been mooted from time to time a system of synodal action, in which the laity and the clergy shall equitably share, has almost invariably held an important place. The Church will only be able to carry out particular reforms effectively when a method has been devised by which, without encroaching either on the supremacy of the Crown or on the rights of Parliament, it is able to regulate its own affairs.

V.

PROPOSALS FOR THE REFORM OF CHURCH LEGISLATIVE MACHINERY.

I. DISESTABLISHMENT.

One proposal, which we mention more by way of giving completeness to our survey than because we conceive it as coming within the terms of our reference, is that of disestablishment.

Some members of your Committee have thought that this would prove to be the only way of securing spiritual independence to the Church; others have attached great value to the principle of establishment, and have never believed that the advantages to be derived from the provisions of a Disestablishment Act would in fact prove an adequate compensation for the severance of the historic connexion between Church and State.

II. SPIRITUAL INDEPENDENCE ON THE BASIS OF ESTABLISHMENT.

It is clear, however, that the task of your Committee is to consider the problem set them in the light of the existing connexion between Church and State, and we therefore turn to the consideration of the problem of how to secure a due measure of spiritual independence on the basis of establishment.

The defect and the remedy.

The main defect of the present situation, as will be obvious from the preceding portions of this report, is, that whereas no considerable reform can be achieved without Parliamentary action, Parliament has neither the leisure, fitness, or inclination, to perform efficiently the function of an ecclesiastical legislature. The remedy that recommends itself to your Committee is to give to the Church the right to legislate, and at the same time to provide a means by which full powers of scrutiny, criticism, and veto, are reserved to the State.

By this means the Church would be provided with such organs and with such a procedure in its relation to the State as would leave it free to determine its own requirements, and, under the sanction of the State, to give effect to its wishes, while the due authority of the State would be safeguarded, and the bases of its historic relationship with the Church would remain undisturbed.

In dealing with this proposal and its consequences, we think it best to consider separately the changes proposed in the machinery of the Church, and those that concern the machinery of the State. In both the State is interested, and as it is to be expected that its approval of the whole scheme will largely depend upon its approval of the machinery suggested for the Church, we propose to deal first with this.

A Church Legislative Assembly.

We recommend, therefore, the formation of a Church Council which shall have power to legislate on ecclesiastical affairs, subject to constitutional safeguards. We deal later on with the method by which it should be set up, and with the conditions under which its powers should be exercised. It is evident that a body entrusted with the important and responsible work that will be assigned to this Council must be properly equipped for law-making, must conduct its business by such methods as shall ensure that different authorities and differing views shall have their proper influence, and must be thoroughly representative of all forms and classes of church opinion. It is the last of these conditions that brings us face to face with one of the main difficulties of our problem, and to this, therefore, we now address ourselves.

Church representative system.

During recent times the Church of England has more than once attempted (so far as its powers have allowed) to realise the idea of a representative assembly. Ever since the movement for spiritual independence began, it has been felt that the only way of rendering church opinion articulate or effective was to set up a church assembly with definite powers. The attempted reform of the Convocations, the institution of the Houses of Laymen, and finally the combination of both in the Representative Church Council, are instances of efforts in this direction. It would be a mistake to underrate the value of the work which these bodies have done in giving expression to the synodal idea, and in focusing the attention of churchmen upon questions of importance. But they cannot render church opinion articulate and effective, because they are not thoroughly representative of that opinion, and have not the power to enforce it in action. These two defects cannot be considered separately. A point most clearly brought out in the course of our enquiry is that in all spheres of church government one of the greatest obstacles to the active participation of the laity in church management is due rather to the feeling that discussion without power to act is useless than to any real lack of interest in church affairs. In order to remove this difficulty it is necessary to provide a system which will be at once representative and effective, and that not merely in the case of the central assembly, but also in that of the lower units of church organisation. It is plain that the question here is, for practical purposes, that of lay representation. To form a plan for the adequate representation of the clergy is, comparatively speaking, a very simple matter. We propose, therefore, to consider first the question of the representation of the laity.

Lay representation.

In dealing with this difficult problem your Committee was fortunate in having before it the very valuable Report on the

Representation of the Laity, prepared by the Committee of the Representative Church Council which was appointed in 1913, at the request of the Council, by the two Archbishops. This Report (dated April, 1914), was based on a reconsideration of the Rules for the Representation of the Laity drawn up by a Joint Committee of both Houses of Laymen, and approved by those Houses at their meeting in November, 1912. It may therefore be regarded as constituting the final stage in the process of exhaustive consideration which this question has undergone during the last ten years. It is divided into two parts, the first dealing with the Representation of the Laity,* the second with Parochial Church Councils.

We append a brief summary of the principal provisions of the scheme, which we have accepted as the basis of our recommendations, adding observations of our own on some clauses. In our recommendations we have departed from this scheme only in two directions: (1) We have recommended that the parochial representatives to the Ruri-decanal Conference (if any) and to the Diocesan Conference shall be elected by the Parochial Church Council, not directly by the Parochial Church Meeting; (2) We have suggested the addition to the Diocesan Conference of a limited number of co-opted members representing wage-earners and students. With these proposals we deal more fully below.

Scheme of lay representation approved by the Representative Church Council and accepted by the Committee.

Under this scheme—

(1) The Church franchise is fixed as follows :—

(*a*) All *representatives*, to whatever assembly they are elected, must be actual lay communicants of the Church of England, above twenty-one years of age, and of the male sex, except that the representatives on a Parochial Church Council may be women.

(*b*) *Qualified electors* in a parish must be above twenty-one years of age and may belong to either sex, provided that they either (1) are actual communicants, or (2) have been baptized and confirmed and are admissible to Holy Communion, and do not belong to any religious body which is not in communion with the Church of England. Their names are to be kept on an electoral roll; and anyone wishing to be placed on it must sign a declaration that he or she is qualified to be enrolled.

(2) *The basic area for the purpose of lay representation* is the parish or "group of parishes," this last term being applied to "two or more parishes situate in the same rural deanery and not having separate Parochial Church

* Considered, amended, and adopted by the Representative Church Council, July 9 and 10, 1914.

Councils, which for the time being have been grouped together by the Diocesan Conference for the purpose of lay representation."

Provision is also made for enabling those qualified electors who have identified themselves with the worship and work of a parish other than that in which they reside to exercise their franchise in that parish, if they so desire, instead of in the parish in which they reside.

(3) *The elections of Parochial Representatives to the Parochial Church Council, Ruri-decanal Conference, and, where the Diocesan Conference so determines, to the Diocesan Conference*, are to take place at a Parochial Church Meeting of qualified electors, held annually and convened by the incumbent of the parish, or in the case of a group of parishes by the rural dean.

(4) *Members of Diocesan Conferences* are to be elected, in such numbers as the Diocesan Conference appoints, by the parochial lay representatives of the Ruri-decanal Conference, unless the Diocesan Conference shall otherwise determine.*

(5) *Diocesan Conferences elect to Houses of Laymen*, either at a meeting or by means of voting papers, the number of representatives being prescribed for the diocese at a fixed numerical ratio.

With regard to (1) we would point out that the creation of this new franchise, while not destroying the existing rights of such parishioners as are not qualified electors, gives to every churchman and churchwoman of full age, who accepts church membership as a reality, a new and definite share in the government of the Church. In this way the Church of England, without losing its national character, would exercise the right inherent in it as a society, of requiring definite qualifications of membership from those who wish to take a share in the management of its affairs.

With regard to (2), we wish to express our sense of the importance of the liberty there given to those electors who so desire, to exercise their franchise elsewhere than in the parish in which they actually reside. The territorial system of parishes in the Church of England is of great value in itself, but to restrict the exercise of the franchise to the actual parish of residence of each elector would, in the existing conditions of church life, especially in large centres of population, in many cases cut needlessly across the actual realities of that life.

With regard to (3), (4), and (5), it will be noticed that in the case of assemblies higher than diocesan the method of direct

* But see below, p. 44.

election, such as obtains in our Parliamentary system, is not adopted. It is plain that the expense and the organisation that such a plan would entail would alone make it impracticable. It has not been adopted by any Church whose representative system we have had the opportunity of studying; and, apart from practical considerations, does not appear to us to be necessary in order to secure an adequate representation of the laity. So long as the lower councils which elect to the higher are living realities, the method of indirect or secondary election is, we believe, sufficient to ensure that those who are elected will really represent the feelings and wishes of the mass of the Church laity.

Parochial Church Councils.

Further, with regard to (3), we are clearly of opinion that better representatives would be secured for the Ruri-decanal and Diocesan Conferences by entrusting the election to the Parochial Church Councils rather than to the Parochial Church Meetings. The Parochial Church Council would be able to keep in touch with its representatives, to consult with them about matters with which the higher Councils would have to deal, and to receive reports from them as to the work done in these bodies. In this way the Parochial Church Council would be kept in close connexion with the whole course of church legislation, and be helped to realise its responsibility for the general welfare of the Church as well as for specifically parochial matters.

This proposal has the additional advantage that it gives statutory recognition to Parochial Church Councils as an integral part of the representative system of the Church, and thus facilitates the work of the Church Council in equipping them with those powers with which we deal in a later section of this Report (page 47).

A suggested addendum to the scheme of the Representative Church Council.

There is, however, a real danger that the process of elimination inseparable from any method of indirect election will prevent the adequate representation of certain classes of churchmen. We therefore propose, more by way of addendum than of amendment to the scheme adopted by the Representative Church Council, that special provision be made to ensure that these classes take their proper part in the government of the Church, until such time as their place is secure without such special provision.

The classes to which we refer are those of wage-earners and students. Under the first of these terms we comprehend churchmen and churchwomen* of all grades who work for a weekly, daily, or occasional wage. By students we mean the large and increasing body of young men and women* at Universities and University Colleges, and members of the staffs of Universities, Colleges, and Schools.

* It should be noted that at present women are not eligible for membership of the Diocesan Conferences.

Wage-earners.

As regards this first-named class, we wish to observe as follows: We are in full agreement with the principle adopted in the Report on the Representation of the Laity, namely, that since the organisation of the Church for all purposes is mainly territorial, the basis of its representative system must be territorial also. But we feel that the thorough representation of the wage-earners cannot be fully secured, for a considerable time to come, unless the inclusion in the higher councils of the Church of a fixed number of persons representing this section of churchmen is enforced by the new constitution. This is necessary because our church assemblies have not in recent years included many working-class representatives, though those who have become members have been warmly welcomed.

To meet this need we submit the following suggestion, which should remain in operation until the Church Council shall otherwise determine:—

A certain number of wage-earners' representatives—not less than 5 per cent. of the lay members of the Conference—should be selected by the committee of each Diocesan Conference as members of the Conference, and be eligible equally with other members of the Diocesan Conference for election to the House of Laymen.

These special representatives should be appointed irrespective of any who have been elected in the ordinary course who may be believed to fall within the definition of wage-earners; and they should be so chosen as to secure a fairly even representation of wage-earners from all parts of the diocese.

Two other difficulties are, however, to be noted as standing in the way of the representation of wage-earners in the higher assemblies of the Church.

One of these is the method of indirect election from the parish to the Diocesan Conference through the Ruri-decanal Conference—which is now the normal practice. We have already indicated our opinion that a method of direct election from the parish to the House of Laymen—comparable to the election of members of Parliament—is not practicable, on the ground both of expense and of difficulties of organisation. We think, however, that the action which has already been taken by the Representative Church Council in the direction of eliminating the stage of the Ruri-decanal Conference might be further strengthened. The present rule of the Representative Church Council adopted July, 1914, is as follows:—

> "(1) The parochial lay representatives in the Conference of the rural deanery in which the parish or group of parishes for which they are elected is situated shall elect to the Diocesan Conference, at such intervals as the Diocesan Conference appoints, such number of lay representatives as the Diocesan Conference prescribes for each deanery.

"(2) Provided that a Diocesan Conference may determine that, in lieu of elections in the Ruri-decanal Conferences, the lay members of the Diocesan Conference shall be elected in the parishes and groups of parishes."

We recommend that this should be altered so as to run:—

"(1) The Parochial Church Councils* of the parishes or groups of parishes shall elect to the Diocesan Conference, at such intervals as the Diocesan Conference appoints, each parish or group of parishes sending to the Diocesan Conference at least one representative.

"(2) Provided that, in cases where the Diocesan Conference determines that such parochial election is impracticable owing to the size of the diocese, the parochial lay representatives in the Conference of the rural deanery shall elect to the Diocesan Conference such number of lay representatives as the Diocesan Conference prescribes for each rural deanery."

The other difficulty is that of the expense involved in attending meetings, specially if held in the day time. To meet this we recommend that any member of the Council, whether coming under the category of wage-earners, as we have defined it, or not, should on application be repaid out-of-pocket expenses incurred, and a fixed proportion of any wages lost in attending either the Diocesan Conference, or the House of Laymen, or the Church Council, and that these should be paid out of a Diocesan Fund.

Students.

The grounds for a special representation of students are somewhat different. A University or a College has a spiritual life of its own, and members of Universities, whether graduate or undergraduate, are seldom able to be effective members of any parish. But the Church needs in its deliberations the contribution which places of learning and education are specially qualified to give. At the present time, moreover, this consideration is reinforced by the striking increase of religious life at our Universities; those who are in touch with University life feel that this is very strong and real, and that it has aroused a deep interest in the Church as an essential element in the Christian religion. It is, therefore, not only the senior and most learned members of Universities who can afford considerable assistance to the Church, but also leading men among the junior members, especially the junior teaching staff. We therefore recommend that each Diocesan Conference should make provision for the representation of Universities, University Colleges, and the staffs of Schools situated in the diocese. All such representatives, whether of wage-earners or students, must

* See page 43.

of course be qualified according to the regulations laid down by the Church Council.

There is, in our judgment, adequate reason for such special action as we propose in regard to these two classes of churchmen. Each represents an interest that is liable to suffer through a tendency to become separated from the main stream of church life. Not less important, however, is the loss to the Church if its deliberative and legislative assemblies are out of touch with the aspirations of the great mass of the working-class population, or with the developments either of knowledge or of thought, and the outlook of the younger generation and those in touch with it.*

The Parochial Church Council.

It is plain that the efficiency of a system of representation must depend on the amount of interest and activity shown in the parish, which is the unit of the ecclesiastical administration that intimately concerns the everyday life of every churchman and churchwoman in the land. Many who will not appreciate—at any rate at first—the value of a central council will rejoice in the knowledge that it is proposed to secure for them a direct vote in the management of church matters in their own parish. In the country districts of England the religious life of the English people is lived in their parishes, their parish church is the shrine of their souls, and the parish churchyard is to them the hallowed sign of their spiritual communion with their forefathers. We believe that the laity will appreciate more fully the nature and gravity of the proposals made for the self-government of the Church, and rally more enthusiastically to their support, if they understand from the beginning that they are to be secured a position of real power in the parochial areas in which they live.

We come now more closely to the question of the Parochial Church Council, its constitution and powers; and here we venture to make suggestions which are not identical with those agreed upon by the Representative Church Council on July 8 and 9, 1915, in regard to this matter.

The principal ground for this divergence is that whereas the Representative Church Council had in view the creation of Parochial Church Councils only on a voluntary basis, our recomendations contemplate that these Councils should be set up, like the other part of the system of church government, under statutory authority. If those Councils are to play the part which we hope they will play in the future of the life of the Church, they must have more definite power and duties given to them than those which the Representative Church Council has assigned to them.

We have already stated that, in our opinion, the Parochial

* For further information on this subject we would direct attention to the "Memorandum on the Church in its relation to Lay feeling as evinced amongst the Wage-earning Classes, Students, &c.," drawn up by Messrs. A. L. Smith and H. E. Kemp, and approved by Mr. Mansbridge (Appendix No. IX.).

Church Council should be given a definite place in the electoral machinery for the representation of the laity for which Parliamentary recognition is asked. Our only reason for not further suggesting that these Parochial Church Councils should at the same time be equipped with full powers has been our fear of overloading the Enabling Bill. But we recommend that a clause should be inserted in the Constitution of the Church Council requiring it, when it has obtained statutory recognition, to draw up and present a measure conferring powers on the Parochial Church Councils already set up as part of the electoral machinery. We recommend—

(1) That these Parochial Church Councils should be empowered—

(*a*) to arrange in conjunction with the incumbent the Parochial Church budget, including the various church expenses, the diocesan quota or apportionment, the parochial contributions for home and foreign missions, and any other branches of church work, and arrange for raising the money required;

(*b*) to arrange with the incumbent the number and allocation of the collections in church;

(*c*) to co-operate generally with the incumbent in the initiation and development of church work, both in the parishes and outside;

(*d*) to keep the electoral roll.

(2) That they should be the normal channel of communication between the parishioners and the Bishop of the diocese, and should have the right—

(*a*) To make representations to the Bishop as regards—

(i.) The suitability of any person presented to the bishop to be instituted to the incumbency of the parish;

(ii.) Alterations in services and ornaments;

(iii.) The affairs of the church and cure of souls in the parish.

(*b*) To make complaint of, and to take proceedings against, an incumbent in the same manner as parishioners or inhabitants of a parish have, or may hereafter have, power.

(3) That they should have the right—

(*a*) To accept and hold gifts of property;

(*b*) To levy a voluntary church rate.

(4) That they should take over and exercise all the ecclesiastical powers of the vestry; and also the powers, duties, and liabilities of the churchwardens, so far only as the matters referred to in (1) and (2) are concerned.

(5) That they should exercise such other powers and functions as may hereafter be conferred on them.

We also recommend that the churchwardens, if qualified for membership, should, without election, be members of the Parochial Church Council, and that the members of the Parochial Church Council should be the sidesmen of the church.

In the case of a very small parish we think that, where the Diocesan Conference shall so determine, all those members of the Parochial Church Meeting who would be qualified to be members of a Parochial Church Council should be entrusted with all the powers of a Parochial Church Council, as we have described them above, in the same way as a Parish Meeting is authorised by the Local Government Act, 1894, to act as a Parish Council in parishes with a population of less than 300. This would not interfere with the grouping of parishes for the election of representatives to the Ruri-decanal or Diocesan Conference, where such grouping seemed desirable.

Position of the incumbent.

In respect of the constitution of the Parochial Church Councils your Committee have had much discussion on the very important point of the position of the incumbent. The arguments for the different views that have been expressed are set forth in an Appendix to this Report,* and we draw attention to them as deserving very thorough consideration and discussion.

THE CHURCH COUNCIL.

Having sketched the principal features of the plan of lay representation on which we propose that the new legislative assembly shall be based, and having discussed in some detail the organisation and the statutory powers and functions of Parochial Church Councils, we are in a position to deal more closely with the assembly itself.

Constituent body.

It is clear to us that the scheme for the constitution of the new Church Council should be considered and approved by the Representative Church Council. We suggest therefore that the drafting of the scheme should in the first instance be entrusted to a joint committee of both the Convocations and of the two Houses of Laymen, and that it should then be submitted to the Representative Church Council for consideration and decision.

Powers of the Church Council.

We now propose to indicate broadly the lines upon which we think that the Representative Church Council, as forming the

* Appendix No. XII.

constituent body of the Church Council, can best perform its work of construction.

We have already stated our view that the Church Council should be given full power to legislate on ecclesiastical affairs, even if this legislation involves the amendment or repeal of existing Acts of Parliament, but subject always to a veto on the part of the Crown and of Parliament. Such legislation would be doubly operative, binding those concerned both as churchmen and as citizens.

We think also that in course of time, if not at once, it would become natural and desirable that the power of making canons, now existing in the provincial Convocations, should pass to the Church Council. Such canons would then become operative on receiving the royal assent; and inasmuch as they would have secured the assent of the representatives of the laity as well as of the clergy they should be regarded as having authority over all churchmen.

The veto of the State.

The reasons for allowing the Church to exercise the power of self-government which is essential to its full life we have already, we hope, made sufficiently evident. The reasons for allowing to the State so complete and peremptory a power of veto as we contemplate do not lie at all in the region of first principles; for we are asking a much less complete measure of freedom for the Church of England than is already claimed and possessed by the Established Church of Scotland. No doubt the claim to spiritual autonomy is the same for every part of the Christian Church, but there are some obvious reasons for expecting a less complete recognition of this autonomy on the part of the State in England than in Scotland. The Church of England does not represent the mind of the English people as fully as the Established Church of Scotland represents the mind of Scotland. Moreover, in the past, owing to historical circumstances, the restrictions under which the Church of England has been accustomed to work have been so severe that the measure of freedom which we propose represents a very considerable advance. There are, of course, great administrative departments in the life of the Church in which it has always acted freely without any state control, and in which it will still continue to act freely. Nothing, for example, in the nature of free action on the part of the Bishop is being surrendered. But in the department of legislation we think that, in return for such freedom as we have claimed from the State, churchmen should feel no difficulty about the retention of the veto of Parliament as well as of the Crown.

The veto of the State need not involve the sacrifice of spiritual independence, since, in the last resort, the Church may, at the cost of disestablishment, assert its inherent rights; but we recognise that in any form of establishment the State must have

power to decide whether any legislation proposed by the Church would render the continuance of state recognition undesirable or even impracticable.

After careful consideration we do not think that it would be found possible to delimit with any precision the sphere within which the Church Council is to be recognised as having power to legislate. We believe that the Church of England has inherent authority to deal with all matters of doctrine, worship, and ritual, as affecting its own members, and to determine all questions of membership. If it attempted to exceed these limits, and make legislative proposals on matters not properly the affairs of the Church, the checks on the part of the State which we suggest would restrain it very speedily and easily.

General Constitution of the Church Council.

(1) Constituent elements.

The model which we have had before our minds in considering the general constitution of the Church Council has been the Representative Church Council as at present organised. We suggest that, like the last-named body, the Church Council shall consist of three Houses, of Bishops, Clergy, and Laity, the first to be composed of the members of the Upper Houses of the Convocations of Canterbury and York, the second of the members of the Lower Houses of those Convocations reformed in the manner we indicate below, and the third of the members of the Houses of Laymen, elected by the method that we have already described.

Reform of the Lower Houses of the Convocations.

It is generally recognised that the Lower Houses of Convocation should be made more fully representative. We have considered the question in the light of the proposals made in the Convocation of Canterbury in 1884 and 1897; and we recommend that a scheme of reform of the Lower Houses should be framed on the following lines:—

It should secure—

(1) That, in order that the proctors elected to represent the beneficed clergy and clergy licensed to officiate in the diocese should form a majority of the members of each House, two proctors from each archdeaconry should be elected to the Lower House of the Canterbury Convocation, as is now the case in the York Province.

(2) That all priests, beneficed or unbeneficed, and duly licensed to officiate in the diocese (with the exception of members of cathedral chapters for whom provision is made below), should have the right to vote at the elections of proctors to represent the clergy of the diocese, and themselves to sit if elected.

(3) That deans should cease to be *ex officio* members of the Lower House, but that cathedral chapters should con-

tinue to elect one proctor to represent them as heretofore; such proctor being either the dean or some other member of the chapter, or other duly qualified priest.

On this plan the only *ex officio* element would be the archdeacons, a body of men who by general admission possess an exceptional knowledge of the clergy and their interests. We believe that such a scheme would ensure a full representation of the parochial clergy, while maintaining in sufficient numbers the *ex officio* element, which has always been an essential and most valuable part of these assemblies. Other schemes of a similar character might, no doubt, be equally effective, and in any case we do not think it necessary to enter into the consideration of the numerical details either of the scheme we favour or of any other. But we are strongly of opinion that the one which we have outlined would very fairly secure that balance between the representative and *ex officio* elements which all advocates of readjustment must keep in view.

(2) Internal constitution, rules, and management of the Church Council.

We consider that subject to certain modifications necessitated by the character and functions of the Church Council, to which we refer below, the existing constitution and standing orders of the present Representative Church Council could with advantage be adopted by the new body. The contents of the clauses of that constitution are as follows:—

Constitution of the Representative Church Council.

(1) Title and constitution of Council in three Houses (referred to above).

(2) The Archbishops of Canterbury and York are joint presidents. The Archbishop of Canterbury, or in his absence the Archbishop of York, or in his absence the Bishop next in precedence present and willing to act, is chairman of meetings of the Council and of the House of Bishops when sitting separately.

(3) Whenever the House of Clergy * sit separately, the Prolocutor of the Lower House of the Convocation of Canterbury, the Prolocutor of the Lower House of the Convocation of York, or a member of the House of Clergy elected by the House *pro hac vice* perform the same functions and in the same order as the persons mentioned in (2).

(4) When the Houses of Laymen * sit separately the chairmen and vice-chairmen of the Canterbury and York Houses perform the same functions as the persons mentioned in (3).

(5) The Representative Church Council is summoned in such manner and at such times and places as the Archbishops determine.

* We have recommended that in the new Church Council each of these Houses should elect its own chairman. See p. 79.

(6) Subject to this constitution, and to any standing order the business and procedure at any meeting of the Council, or of any House sitting separately, is regulated by the chairman thereof.

(7) In order to pass the Council every proposal must receive the assent of each of the three Houses, sitting together or separately; except in the case of a question relating only to the conduct of business, which is decided by a majority of the whole Council.

(8) Subject to Clause (7) any question proposed at a joint sitting of the three Houses may be voted on by a show of hands of the whole body; but any two members may insist on a vote by Houses.

(9) The assent of each House is signified by a majority of the members of the House present and voting, except in the case of an alteration in, or addition to, the constitution (under Clause (14)).

(10) Nothing in this constitution, nor in any proceeding of the Council, can "interfere with the exercise by the Episcopate of the powers or functions inherent in them, or with the several powers and functions" of the Convocations.

(11) "It does not belong to the functions of the Council to issue any statement purporting to declare the doctrine of the Church on any question of theology."

(12) Subject to Clauses (10) and (11) "questions touching doctrine and discipline may be discussed, and resolutions relating thereto may be passed by the Council in like manner as in the case of other questions: Provided that any projected legislative measure touching doctrinal formulæ or the services or ceremonies of the Church, or the administration of the Sacraments and sacred rites of the Church, shall be initiated in the House of Bishops, and shall be discussed by each House sitting separately, and the Council shall either accept or reject the measure in the terms in which it is finally proposed by the House of Bishops, after that House has received and considered the report of such separate discussions."

(13) Standing orders may be made from time to time so long as they are not inconsistent with the provisions of the constitution.

(14) Alterations or additions to the constitution can only be made by a resolution of the Council *passed* at a joint meeting of the three Houses by a majority of not less than two-thirds of the members of each House present

and voting after due notice given, and *confirmed* after due notice at the next session of the Council held after the expiration of six calendar months.

The principal standing orders

(1) Provide for the composition and functions of a standing committee.

(2) Provide for the appointment of a clerk, and prescribe his duties.

(3) Require that notice of motions shall be received by the clerk twenty-eight days before the commencement of the session.

(4) Fix the quorum of the Council at 80 (10 Bishops, 35 clergy, 35 laymen).

(5) Fix the duties of chairman. Any ruling by the chairman of the Council affecting Clauses (10), (11), or (12), of the constitution may on a motion by 10 members be referred to the House of Bishops, either sitting separately or in the presence of the Council, and their decision shall be final.

(6) Allow chairmen to have one vote, and no second or casting vote.

(7) Provide that a standing order may be suspended only with the assent of two-thirds of the members.

(8) Provide rules for debate.

Principles governing the procedure, equipment, business, and ceremonial of the Church Council.

We have to enquire how far these rules and methods of procedure, which were originally drawn up for the guidance of a non-statutory consultative body whose sittings are necessarily brief and occasional, are suited to the requirements of a statutory body upon whose activities is to depend the future of church legislation.

Without entering closely into the details of procedure and equipment, all of which must finally be left to the consideration of the Church Council itself, it is possible to emphasise some points which must be secured if it is to do its work effectively and safely.

(1) Presiding officers.

We presume that the presiding officers of the Council would be in ordinary circumstances the Archbishops, or the senior Bishop present. It is important to remember that the increased strain that longer sittings would entail must involve the provision of efficient substitutes, who not only would act when the presidents were unavoidably absent, but would be required (somewhat after the manner of the Chairmen of Committees in Parliament) to take charge of special kinds of business.

We see no reason why the chairman for the time being should not be allowed a second or casting vote.

(2) Procedure.

(A) *Power to decide Order of Precedence of Business.*—Under the Standing Orders 4, 5, and 9, of the Representative Church Council, the presidents, with the advice of the Standing Committee, decide the order of the agenda paper, and may assign to a particular day any of its items, which they, or either of them, desire to bring before it, or of which due notice has been received from members. This plan may be varied on the ground of urgency, providing that the presidents, or a majority of members present and voting on a motion made with the consent of the presidents, or three-fourths of those present with the consent of the chairman, so decide. It seems to us that the power thus placed in the hands of the presidents should be preserved in the constitution of the new body. It is of the first importance that a legislative assembly, whose sittings in point of time are limited, should be protected against waste of time on matters of minor importance. The present method enables the presidents to ensure that the attention of the Council is directed to business of real importance for as long as they think necessary. We think that in the arrangement of agenda full use should be made of the advisory powers of the standing committee.

(B) *Legislative Business*, if it is to be efficiently performed, must, it seems to us, be transacted either on the principle of successive readings, and of a procedure clause by clause in a committee stage—a process involving a large expenditure of time—or on the principle of reference to specially appointed committees, who would report upon the subject and draft a measure embodying their recommendations for submission to the Council. We recommend the latter plan for adoption by the Church Council, which of course must be fully empowered to appoint its own committees. But even this plan could not obviate the necessity for stages of debate and opportunities of detailed consideration when amendments could be moved within the Council itself. As the Church Council would be occupied with measures intended to form part of the law of the Church, it is inevitable that they should be carried through by a more elaborate process than such proposals for voluntary action as now come before the Representative Church Council.

The question of separate sessions also requires consideration. We believe we are correct in saying that such separate sessions have never been held in the history of the Representative Church Council; and that a vote by separate Houses, when the need for it has arisen, has been taken in a session of the whole Council, and in the form of a vote by orders. It seems probable that this plan would in nearly every case be found sufficient in the proposed Church Council. At the same time we are strongly in favour of reserving to each House the power of retiring for the purpose of separate session whenever it thought desirable; and we think that in questions included under Clause (12) of the constitu-

tion of the Representative Church Council such a course should be made obligatory.* Subject to the above exceptions we think that the more business was transacted in joint sittings of the whole Council the more satisfactory, both in point of time and of the legislation under discussion, the result would be.

We wish to notice a suggested modification of the plan of session by separate Houses which has been brought to our notice as one which has been largely adopted in other Churches of the Anglican Communion.†

The suggestion is that on occasions when, under the constitution of the Representative Church Council the three Houses may sit separately, it should be open to the Houses of the Laity and the Clergy to sit together, apart from the House of Bishops. Such a plan is worthy of consideration, as being calculated to promote lay and clerical co-operation, and emphasise the special character and authority of the Upper House. Cases too might arise (*e.g.*, under Clause (12) of the Representative Church Council constitution) in which a separate discussion in the Upper House, without involving the necessity of breaking up the whole Council, might be very convenient. But we are wholly opposed to the adoption of any hard-and-fast rule which would deprive the clergy and the laity of the power of expressing their views separately. It is very important, in order to safeguard the interests of the different elements represented in the Council, that minorities should have the right to claim a vote by separate Houses.‡ We consider, however, that such a claim should require to be made by not less than ten members.

(c) *Power to obtain information.*—It might be advisable that

* See below "(3) Subjects dealt with by special procedure."

† *e.g.*, Churches of Canada, Newfoundland, Province of Perth (W. Australia), S. Africa, America, and Ireland.

‡ This power of separate discussion and voting renders less important the relative numbers of the Houses. At present the numbers are as follows :—

	Bishops.	Clergy.	Laymen.
Province of Canterbury ...	29	185	260
Province of York	11	90	125
	40	275	385

At the Representative Church Council meeting in July, 1914, there were present :—

	Bishops.	Clergy.	Laymen.
Province of Canterbury ...	22	96	135
Province of York	5	34	54
	27	130	189

The preponderance of the lay element, in view of the numbers it represents, is perfectly justified.

the Church Council should be given a definite though limited power to collect such information as may be necessary to enable it to legislate. We do not mean by this that it should have the power of a Parliamentary Committee, but that on such points as it may think necessary it should be able to ask for information or returns from such authorities as Parochial Church Councils, Diocesan Conferences, Queen Anne's Bounty, or the Ecclesiastical Commissioners. We do not suggest that there would be any desire to withhold it, when it could with propriety be given, but the right to ask for such information might save trouble and waste of time.

(D) *Formal procedure.*—It is important that the Church Council should possess a dignified if simple ceremonial. We think it important that when there is a joint session of the three Houses, the members of each House should sit together in one body in a distinct part of the chamber, and separate from the members of the other Houses. The arrangements for voting and speaking also require careful consideration. We understand that the plan at present customary in the Representative Church Council, by which members are obliged to address the Council from the platform, is most unsatisfactory; and we feel that it is of great importance that the form of the building and the seating arrangements should be managed so as to allow of each member, as in the House of Commons, addressing the Council from his place.

(3) Subjects dealt with by special procedure.

Under the scheme that we propose the Church Council will have full powers to legislate on all matters concerning the Church. But we are strongly of opinion that certain matters, if they are to be made the subject of legislation, should be treated in a special way. It is essential, not merely on account of their intrinsic importance, but for the sake of inspiring the great mass of churchmen with confidence, that legislation affecting fundamental church questions should be subject to special procedure. On this ground we think that Clauses (10) to (12) of the Representative Church Council constitution should be embodied in the constitution of the Church Council.

The Church Council and the Convocations.

But in respect of Clause (10) we suggest that the provision which debars it from interfering in any way with the several powers and functions of the Convocations should not apply to the Church Council which we recommend to be set up, because we believe that the probable effect of our scheme, if adopted, would be sooner or later to bring into disuse the old legislative procedure of the Convocations. If the Church Council proved itself an effective agent of ecclesiastical legislation, it would become more and more unlikely that the Convocations would have recourse to their old constitutional methods of obtaining legislative changes. At the

present time, as we have seen, those methods are little used and are limited and cumbrous in their action, and it seems more probable that the Convocations would willingly yield the complete function of law-making to the body specially constituted for that purpose, than that they would elect to enter upon a kind of legislative competition which would be undesirable in itself and ill calculated to promote the prestige and authority of either of the assemblies concerned. We make no proposal statutorily to deprive the Convocations of their legislative powers; we feel that it is essentially a question which time alone can settle.

In respect of Clause (11) we wish to state that we understand it to refer to the formal interpretation of doctrine and not to limit in any way the scope of the provisions of Clause (12).

(4) Length and times of session.

It is quite obvious that if the Church Council is to do its work, much longer sessions will be necessary than those at present customary in the case of the Representative Church Council or even in that of the Convocations. This, we admit, is a difficult matter, because the members of the Upper House and of the House of Clergy are already burdened with the duty of the administration of the Church, and, like many members of the Lay House, have only a limited time available for the work of legislation. But it is essential that this difficulty should somehow be faced and overcome, as it has been by other Churches.

The Church Council must be free to fix the periods of its own sessions, and the President to summon a meeting in any emergency, without reference to parliamentary times and sessions.

The settlement of the procedure and internal arrangements of the Church Council is clearly a matter for the Church Council itself when formed, and not for your Committee. We have, however, thought ourselves justified in thus drawing attention to certain aspects of the subject which seemed to us to be of special importance.

Having described those parts of our scheme which apply to the Church itself, we now propose to consider the machinery by which the control of the State is to be preserved.

VI.

CONTROLLING MACHINERY ON THE SIDE OF THE STATE.

Methods of satisfying the requirements of the State.

We have been instructed to "inquire what changes are desirable in order to secure in the relations of Church and State a fuller expression of the spiritual independence of the Church as well as of the national recognition of religion." We have shown in this Report how this question has now become one of vital importance in the eyes of very many members of the Church of England; and we have made recommendations which in our judgment would secure to the Church a fuller expression of its spiritual independence.

It is now our business to show how this fuller expression of the spiritual independence of the Church can be made consistent with the national recognition of religion.

We shall have done this if we can show that under our scheme the effective power of the State to safeguard itself is completely preserved while liberty is given to the National Church so to regulate its internal concerns as to become a more effective witness to the Gospel of Christ.

The outcome of the historical relations of Church and State in England has been that the State has asserted the right to exercise control over legislation on the affairs of the Church as a condition of the continuance of that ancient connexion between Church and State which in these latter days is usually called "Establishment," and has exercised that control by making Parliament itself the normal instrument of ecclesiastical legislation.

We have shown in this Report that this plan has broken down, and we shall now proceed to propose a plan in substitution for it, which, while freeing Parliament from a task for which it is unfitted, will preserve to the State an effective control over the legislation of the Church.

Machinery recommended by the Committee.

The plan that commends itself to your Committee is that every measure, after it has been passed by the Church Council, should be submitted to a standing committee of the Privy Council, to be known as the Ecclesiastical Committee, and consisting of about twenty-five privy councillors, qualified by their learning or by their legal, parliamentary, or official attainments and experience properly to advise the Crown and Parliament in respect to the exercise of the authority of the State in relation to the Church.* This Committee could also hereafter advise the Crown both with regard

* The King in Council when he speaks through this specially constituted Committee of the Privy Council will speak in the name of the State and not in the name of the Church.

to constitutions and canons passed by the Church Council, and submitted for the royal assent; and also in case of doubt whether a measure passed by the Church Council required submission to Parliament or could be dealt with by the Crown alone as a constitution or canon. The measure sent up by the Church Council would be presented to this Ecclesiastical Committee by a Legislative Committee of the Church Council, which should include members of all the three Houses of that Council. In presenting the measure this committee would add such exposition and elucidation of its provisions as might be convenient; and at any point during its deliberations the Ecclesiastical Committee might invite the members of this Legislative Committee to a conference for further discussion.

After consideration the Privy Councillors would frame a report to the King declaring whether in their opinion the measure ought or ought not to receive the royal assent, and adding such reasons as they might think desirable for that opinion. But before final adoption that report should be communicated in draft to the Legislative Committee and through it to the Church Council. This committee might at any time during the deliberations of the Ecclesiastical Committee, whether before or after the communication of the draft report, acting either on its own motion or by the direction of the Church Council, withdraw the measure with a view to its being further considered by the Church Council, and, if that Council so desired, presented to the Ecclesiastical Committee in a new or modified form. But, if the measure should not be withdrawn by the church committee, the Privy Councillors would proceed to make their report to the King. If the measure proposed were to be dealt with by a canon the royal authorisation needed for its promulgation would then be either granted or refused. But if the measure was deemed to require parliamentary sanction both the measure and the report should then be forthwith laid before the Houses of Parliament. The measure would lie upon the Tables of both Houses of Parliament for forty days. If the report of the Ecclesiastical Committee recommended that the King's assent should be given to the measure, then, at the end of the forty days the measure would be submitted for the royal assent, unless during the forty days a resolution should be carried in either House of Parliament directing that the measure should not be so submitted. If, on the other hand, the report should have recommended that the measure should not be submitted for the royal assent, at the end of the forty days the measure would be removed from the Tables of the two Houses, and not further proceeded with, unless during the forty days a resolution should be carried in both Houses of Parliament directing that the measure should be submitted for the royal assent, when, in accordance with the direction of Parliament, it would be so submitted. When the royal assent had been given

to a legislative measure, that measure would acquire the force of an Act of Parliament.

By this procedure the right of the State to give or withhold its consent to legislation relating to the Church would be fully safeguarded. Every legislative measure would undergo the scrutiny of an able and experienced committee of Privy Councillors. The report of this committee would guide Parliament in its final decision.

That decision, when it was in harmony with the advice of the Privy Councillors, might be given by tacit acquiescence without the burden of a discussion; and even when, more rarely, Parliament decided to act against the advice of the report the decision would be given in the light of its exposition and criticism. The Church would also gain by such an arrangement, for it would have secured facilities for legislation subject to the veto of the State. It would know that, even if a measure were rejected by the State, it had received full consideration, and that, if accepted, it had been accepted in the shape given to it by the Church's own legislative assembly.

Principles upon which the proposals are based

We wish to make a few observations as to the principles upon which this proposed readjustment of legislative functions is based. It is not, of course, contended that this plan, if accepted by Parliament, would leave the relative position of Parliament and Church exactly as it is. Its object is to secure to the Church a real measure of legislative autonomy, and therefore the acceptance of the plan by Parliament must be founded on the assumption that the machinery provided on the side of the Church is adequate for the performance of its functions. Unless and until Parliament is willing to trust the Church to know what it wants and to make its demands in a reasonable form, no progress can be made. On the other hand, if Parliament is thus willing, we believe that the state machinery which we recommend will prove adequate to its purpose. But it must be clearly understood, in considering the working of that state machinery, that it must be judged, not as amounting to a complete legislative process in itself, but as constituting the complement of the legislative process supplied by the machinery of the Church Council, which we have already described.

These proposals are founded on the hypothesis that what Parliament will require in order to ensure that the control of the State shall be sufficient is not an opportunity to reduplicate in the House of Commons the process already gone through in the Church Council —in which case the plan from the standpoint of the autonomy of the Church would cease to possess any real value—but an assurance that all measures framed by the Church Council will pass under the scrutiny and criticism of a competent state authority and be subject to the exercise of an absolute veto in the event of

their proving unsatisfactory from the point of view of the State. These conditions we believe to be fulfilled by the machinery we recommend.

Form of the Enabling Act.

The form of the Act, by which Parliament would recognise the existence of the Church Council and enable it to do its work, remains to be considered.

In any case the Bill must enact the machinery by which the consent of the State is to be given to church legislation. It might also contain in a schedule the constitution of the Church Council and its legislative procedure. But this would be objectionable both on theoretical and on practical grounds. For it would mean that the constitution of the Church would be fixed by Parliament; and though Parliament might use its opportunity of framing a church constitution very sparingly, or might even acquiesce silently in whatever scheme was propounded by the authorities of the Church, it might on the other hand make important modifications in the constitution which could only be rejected by the Church at the price of wrecking the whole scheme, and might under this pressure be accepted by the Church. But such acceptance would be a sacrifice of spiritual independence indefensible and offensive to the sentiments of churchmen. And practically the process of debating and passing a constitution of the Church through the House of Commons, if even a small section of that House were hostile, would be in the highest degree painful and difficult.

Another method would be to give the necessary powers to such a Church Council as might afterwards be set up under the authority of the Convocations. This would avoid all the difficulties of passing the Church constitution through Parliament. But it would be to ask more than it is likely we could obtain. Parliament could hardly be blamed if it should be reluctant to give a blank cheque to the Convocations allowing them to set up whatever constitution they pleased, and giving beforehand important powers to a Church Council which had not yet come into existence.

A third course which we recommend avoids this objection, without submitting the details of the constitution to parliamentary debate. The constitution might be drawn up in all its details. This would be the work of the Representative Church Council with its three Houses of Bishops, Clergy, and Laity. When the work was complete it would be necessary for the Convocations, as being bodies with a legal status, to adopt it and to include it in a Report to the King. This Report would be a document of which Parliament could take cognisance, as it has before taken cognisance of reports of the Convocations. The Report would be formally laid on the Tables of the two Houses. Then the Enabling Bill would be brought in, which would confer the necessary powers

upon the Church Council whose constitution was set forth in the report of the Convocations. In this way Parliament would be fully informed of the character of the body to which it was asked to entrust power. But Parliament would not constitute the body directly or indirectly; it would only recognise it when constituted. This seems to us both in principle and practically the proper attitude for Parliament to adopt towards the Church Council. The State has the fullest right to give, or not to give, its recognition and approval to the institutions that the Church may set up. But it has not the right to impose a government upon the Church, nor even to share with the Church the task of building up such a government. And as we have pointed out, the interference of the State beyond its proper sphere is not only theoretically objectionable but practically inconvenient both to Church and State. By the plan that we suggest much parliamentary time would be saved, many painful discussions would be avoided, the right of the State to lend its authority with full knowledge and with its eyes open would be secured, and the spiritual freedom of the Church would be carefully respected.

To illustrate the proposals of your Committee, Mr. J. Seymour Lloyd and Mr. H. G. Snowden have, under the instructions of a Sub-Committee, on which Sir Alfred B. Kempe kindly agreed to act, drafted an Enabling Bill and Convocation Report, which will be found as Appendices to this Report.

VII.

WORKING OF THE PROPOSED SCHEME.

Character of the proposals made.

We have now come to an end of our recommendations for the readjustment of the relations of Church and State in the direction of self-government for the Church.

The effect of these proposals must be considered, first, in relation to the Churches of the Anglican Communion and to the other Churches of Christendom; secondly, in relation to the Church at home.

Effect of these proposals on the relations of the Church of England (A) to the rest of the Anglican Communion

First we may consider the effect which the adoption of our recommendations might be expected to have upon the relations of the Church of England to the other Churches of the Anglican Communion, and indeed to all the Churches of the world. Some of these Anglican Churches are bound, or have bound themselves, to deviate in no particular from the standards of faith and worship which obtain in the Church of England, and of course any legislative freedom won for the Church of England to modify its standards and rules would involve a gain for them. But the effect would be no less considerable for those provinces of the Anglican Communion which are bound by no such restriction. Their corporate life centres in their provincial or general synods. When a common mind exists among them they can express it through their synods in suitable canonical regulations. But they regard with reverence and affection the Mother Church of England. They look to it for leadership. And the fact that the Mother Church is tied and fettered as it is, hinders it from taking the place it should take as a leader in the great task of adapting our ancient heritage to the requirements of the present day. The movement of the whole fellowship of Anglican Churches is hindered by the disadvantageous position in which the Church in England at present finds itself.

This is especially apparent at the Lambeth Conference, which is the chief instrument of Anglican unity. The Conference not being a legislative body, its resolutions are only suggestions to the various Churches of whose representative Bishops it is composed. But it is an embarrassment to the Conference that the Church of England is not likely to be able to adopt any suggestion which involves a change in standards or rules of worship, or faith or discipline. It is not too much to say that the great task that belongs to all the constituent Churches of adapting our heritage from the past to the needs of the present is seriously hindered by

the fact that the Church of England cannot look forward under present conditions with reasonable hope to removing even the most generally admitted obstacles to spiritual progress, if these obstacles are embodied in laws or legalised arrangements of the past.

(B) To the other Churches of the world

And to pass for a moment into the wider field of the relation of the Anglican Communion to the other Churches of the world, we believe that there is an important and distinctive witness which the Anglican Communion is divinely commissioned to bear among the Churches of the world. But if it is to be effectively borne, the Anglican Communion as a whole, and therefore the Church of England as the premier Church of that Communion, must be free to let her unchanging principles of faith and worship and organisation express themselves in the terms which are best suited to the new requirements of the age in which we live. Thus we believe that if our recommendations were allowed to take effect and a greater freedom of self-regulation were allowed to the Church of England, both its relationship to the Churches of the Anglican Communion would become far more satisfactory, and the Anglican Communion as a whole would have a far better chance of presenting itself in its true character and fulfilling its true mediating function in the whole Church of Christ.

On the Church at home

In regard to the effect of our proposals at home, we recognise that the task of giving to the Church a larger measure of legislative autonomy is in all the circumstances of past history and current opinion not easy, and it will not be surprising if our plan excites the fears of some and disappoints the hopes of others. But we have constantly had in mind the necessity of regarding, and if possible obviating, the criticisms of churchmen of all shades of opinion who are concerned for the well-being of the Church. And we believe that from whatever side our design is surveyed it will be found so framed as to give no reasonable cause for alarm.

Not revolutionary,

Some churchmen, loyally devoted to their Church, may feel anxious lest the more facile and expeditious process of law-making which we propose may usher in dangerous and revolutionary changes. But we are confident that such fears are unfounded. Nothing can be done under our plan save with the consent of the three Houses of the Church Council—of the Bishops, Clergy, and Laity. In respect to those questions relating to doctrinal formulas and to the rites and ceremonies of the Church, about which churchmen are most sensitive, a special procedure secures to the House of Bishops the sole right of originating any legislative measure and propounding it for the assent or dissent of the two other Houses. And even after the approval of the Church

Council and its three Houses has been obtained, there remains the veto placed in the hands of the Houses of Parliament, to be exercised in the name of the State under the advice of a Committee of Privy Councillors experienced in public business. No one, we think, who follows in imagination a legislative proposal from its first stage of discussion in the Church Council to the ultimate assent of the Crown which gives it the force of law, will be troubled by anticipations of reckless or violent change.

The security against such changes does not mainly depend upon the constitutional procedure, deliberate and careful as that will be. It depends rather upon the character of the Archbishops and Bishops, of the Archdeacons and Proctors, who will form the Houses of Bishops and Clergy, and of the Laity, who will be elected to the House of Laymen by a franchise wide enough to include all sorts of devout churchmen. In all three Houses the dominant temperament will be one of prudent conservatism. Nor need alarm be felt by those who dread the evils of purely clerical dominion and a return to the mediæval conception of the relations of clergy and laity. On the contrary, by this plan the laity will have for the first time within the Church a recognised distinctive organ to express their will. The authority of the House of Laymen, the consent of which will be necessary to every act of the Church Council, is something new in the history of the English Church. The lay people who have the right to receive communion will also have the right to share in the government of the Church. This right they will have, not through the State or because they are citizens, but from within the Church as sharers in its divine life. And this new right will be gained without abandoning the power of the State to reject any change in the laws which govern the Church. The veto of Parliament gives not to faithful churchmen alone, but also to those laity who dissent from the Church or for whatever reason hold aloof from its ordinances, a right in the name of the nation to hinder any modification in the present conditions of the Establishment. Whatever other fault may be found with our plan, it cannot reasonably be denounced as handing over the laity to clerical dominion.

But effective for their purpose.

It is perhaps less easy, though only a little less easy, to reply to the criticisms of zealous reformers who may complain that our plan is too conservative, and that many most necessary reforms will fail to command the successive consents of an episcopate traditionally cautious; of clergy mature in years and distrusting novelty by temperament and professional bias; of laymen whose loyal affection to the Church does not readily distinguish between its beauties and its blemishes; and of Parliament, advised and almost invariably guided by Privy Councillors much more likely to lean to the side of prudence than to that of hazard. To these

critics we should answer that if our plan is conservative, it is conservative because those whose opinions we have to make effective are themselves conservative. When we speak of the self-government of the Church we mean that the Church should be able to make those changes which the Bishops, clergy, and laity of the Church are agreed in desiring. When we say that in an established Church the consent of the State must be asked before changes are introduced which might modify the relation between the two parties to establishment, we mean that Parliament should really have power according to its will to prevent such modifications. We cannot help it if the voices of those who must be heard in respect to changes in an Established Church are voices rather cautious than sanguine; more prone to answer in the negative than in the affirmative. But the reformer will be mistaken if he should think he will gain nothing by our plan. He will gain this great amelioration, that change will be hindered only by the deliberate dissent of some authority entitled to be heard and no longer by the inefficiency of the mechanism by which change can alone be effected. At present it is not enough that churchmen almost unanimously or by a great preponderance of opinion desire a reform, nor that they have with them the approbation of a majority of both Houses of Parliament. Bishops, clergy, and laity, on behalf of the Church, Lords and Commons, on behalf of the State, may all desire a reform to pass, and yet pass it cannot and does not year after year, because the mere mechanical encumbrances enable a small minority to stand in its way. Our plan removes this great and scandalous evil. If it be adopted, whatever change the proper authorities of Church and State approve will be made deliberately but easily; and if those changes are not likely to be such as to alarm even the most timid, that is because the proper authorities of Church and State have little taste for violent or revolutionary developments.

Conclusion.

We must add one word in conclusion. In this Report we have set forth a plan to improve the government of the Provinces of Canterbury and York. The very name "Province" reminds us that we have to do with parts of a world-wide kingdom. In performing our task we have tried to be obedient to the laws of that kingdom and the authority of its Divine Ruler. And it is important that those who read what we have written should bear in mind not only the topics which are here discussed, but the awful truths upon which their importance really depends. Our Report is concerned almost entirely with constitutional machinery, with the powers of the Church Council and of Parliament, with checks and balances, with methods of representation, with deliberative procedure, and kindred matters. Such machinery is necessary. But we do not put our deepest trust in it. Our trust is in Almighty God. It is only by obeying His

Will and co-operating with His Purpose that the government of the Church can be amended. Church reform is but a valley of dry bones unless the breath of God pass into them and give them life. We have tried accordingly to base our plan on principles which we reverently believe may be pleasing in His sight. Great and sacred realities lie behind the customary phrases we have used. The spiritual independence of the Church means something much holier than conformity with ecclesiastical tradition or the application of the principles of devolution and autonomy to the Church. The Church should have independence because it should be free to obey the sovereignty of its King, Jesus Christ, and the guidance of His Holy Spirit. For the true seat of authority in the Church is neither among priests nor people, it is with God. And the question which ought to be asked about our plan or any plan of church government is whether we may hope that it will be accepted as an instrument by the Holy Ghost; whether under it the Church will more readily and faithfully obey the Will of Our Lord Jesus Christ.

Our plan is a plan for the better government of a part of Christ's kingdom. To His authority it must conform; by the blessing of His Spirit it can alone avail. We humbly present it therefore at His footstool, confessing our unworthiness and not doubting its imperfections, but praying that if there be anything in it which finds favour in His eyes, He may use it for His glory and for the good of His Church.

SELBORNE.
ARTHUR JAMES BALFOUR.
G. F. BROWNE.
HUGH CECIL.
FOSTER H. E. CUNLIFFE.
LEWIS T. DIBDIN.*
DEVONSHIRE.
DOUGLAS EYRE.*
WALTER HOWARD FRERE.
H. GEE.
HENRY E. KEMP.
F. J. LIVERPOOL.
J. V. MACMILLAN.
ALBERT MANSBRIDGE.
J. H. B. MASTERMAN.
C. OXON:
PARMOOR.*
ARTHUR L. SMITH.
THOMAS B. STRONG.
W. TEMPLE.
F. S. GUY WARMAN.
R. WILLIAMS.
WOLMER.

* Subject to reservations in Memoranda overleaf.

MEMORANDA BY MEMBERS OF THE COMMITTEE.

I.—By Sir Lewis T. Dibdin.

I have signed the Report because I desire to express general agreement with its recommendations as embodying a scheme which would, I think, command support if the readjustment of the relations of Church and State *without Disestablishment* should ever be seriously entertained by both of them. The Report contains some statements of opinion and recommendations on details which seem to me disputable, but the only matter on which I feel bound to record my dissent is the proposed special representation of students in Diocesan Conferences. I deprecate class representation altogether, and although in the case of "wage-earners" I reluctantly acquiesce as a temporary measure in the recommendation of the Report, I am unable to perceive any corresponding necessity in the case of university and other students.

II.—By Mr. Douglas Eyre.

I have signed the Report subject to the following reservations:—

1. A summary of the Legal Relations between Church and State (p. 27 of the Report) is, I submit, incomplete without a reference to the relations in which the State stands to property held by various corporations within the Church. This relationship has been well described by the late Sir William Anson in his *Law and Custom of the Constitution* (Vol. II., Part II., cap. ix., sec. iii.).

2. It appears to me to be essential for the Church frankly to claim the power, subject to the constitutional safeguards referred to in the Report, to make complete and effective rearrangements in connexion with ecclesiastical property, and the conditions of its tenure, and also in connexion with patronage.

I am not satisfied that the Enabling Bill is so framed as to secure this result.

3. I am not able to associate myself with the statement contained in p. 66 of the Report to the effect that the dominant temperament in all three Houses of the proposed Church Council will be one of prudent conservatism, if by that phrase it is meant that there will be a continuation of what I consider to be the excessive caution which has in the main characterised Church policy in the past. The Church appears to me to be blighted with this kind of prudence. In this connexion I think it only fair that the description of the House of Commons as an ecclesiastical legislature (pp. 28 and 29 of the Report) should be balanced by the further observation that the House naturally objects to its time being taken up with the consideration of tinkering measures.

In the course, for instance, of the debate on the Benefices Bill (1898) the main criticism on the Bill related to its inadequacy. Its promoters were plainly told that a measure which really struck at the root of the abuses with which it was concerned would have received support from all parts of the House.

4. It may be that the temperament to which I have referred may continue to dominate Church policy, but I think that the Church had far better make up its mind, in the Representative Church Council or otherwise, before Parliament is approached, that it needs an entire reconstruction. This might be ultimately embodied in a constitution and canons similar, *mutatis mutandis*, to those of most of the other branches of the Anglican Communion.

The Church Council itself (I prefer the term "Synod") and the Parochial Church Councils could, I submit, be much more effectively constituted in conjunction with the simultaneous erection of effective Provincial, Diocesan (and perhaps also Ruri-decanal) Councils, and simultaneous rearrangements with regard to ecclesiastical property, patronage, and law.

5. If Parliament were approached with a complete scheme of reconstruction, the functions of the proposed Ecclesiastical Committee of the Privy Council would be capable of more precise definition. When once a complete constitution and set of canons had been sanctioned by the State, the subsequent functions of the Committee need only relate to alterations of or additions to such of the provisions of the constitution and canons as had at the outset been declared fundamental or unalterable without submission to and approval by the State authority.

III.—By Lord Parmoor.

The Resolution passed by the Representative Church Council on July 4th, 1913, clearly denotes that the Representative Church Council were in favour, not of the severance of the connection between Church and State, generally referred to as Disestablishment, but of the reform and improvement of that connection in order that the principle of Establishment might be placed on a sounder basis. The operative words of the reference to the Committee emphasise the same point. They are:—

> "To inquire what changes are advisable in order to secure in the relations of Church and State a fuller expression of the Spiritual independence of the Church as well as of the National recognition of religion."

It is not only the relation of the Church to the State, but of the State to the Church which comes within the terms of the reference, and the Committee are asked to consider changes advisable, not only to obtain a fuller recognition of the Spiritual independence of the Church, but also a fuller recognition of all that is implied in the expression "the National recognition of religion."

The first question to determine is the frontier line between Spiritual independence and State control in some form. I agree that it would be unadvisable to attempt to draw this line with too great precision, and there are certain matters capable of being catalogued either on one side or the other, but the main distinction is essential. The Spiritual independence of the Church at least implies full power over questions of ritual or doctrine, and the National recognition of religion necessitates a sufficient control in the State to ensure that the Church will carry out effectively the great duties and obligations which it undertakes and is bound to fulfil.

Fuller expression of the Spiritual independence of the Church.

Apart from the practical impossibility of matters of ritual or doctrine being satisfactorily determined by such an authority as Parliament, the claim to be able so to determine them has never been conceded by Churchmen, and is inconsistent with the principle on which the Church is founded. It is not necessary to go back to the earlier stages of Church history before the period of the Reformation, but I desire to state categorically my view that the abolition of the foreign jurisdiction of the Pope at that date did not in any way affect the continuity of the Church. Since that date it is sufficient in order to establish the claim and

position of the Church and to avoid unnecessary detail to quote the XIXth and XXth Articles of Religion:—

"*XIX.—Of the Church.*

"The visible Church of Christ is a congregation of faithful men, in the which the pure Word of God is preached, and the Sacraments be duly administered according to Christ's ordinance in all those things that of necessity are requisite to the same.

"As the Church of Jerusalem, Alexandria, and Antioch have erred, so also the Church of Rome hath erred, not only in their living and manner of Ceremonies, but also in matters of Faith."

"*XX.—Of the Authority of the Church.*

"The Church hath power to decree Rites or Ceremonies, and authority in controversies of Faith. And yet it is not lawful for the Church to ordain anything that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of Holy Writ, yet, as it ought not to decree anything against the same, so besides the same ought it not to enforce anything to be believed for necessity of salvation."

These two Articles denote two factors of essential importance in the view of the Church.

First, that the visible Church of Christ is a congregation including laymen so long as they are faithful, and constitute a congregation in which the pure Word of God is preached, and the sacraments duly administered according to Christ's ordinance in all those things that are of necessity requisite to the same. This limitation and standard have been carefully preserved in the definition adopted by the Representative Church Council.

Secondly, that the Church so constituted hath power to decree rites or ceremonies, and authority in controversies of faith, subject to the limitations expressed in Article XX. which make it unlawful to ordain anything that is contrary to God's Word written, or to expound one place of Scripture, that it be repugnant to another. The practical question arises, In what form can the Church conveniently meet to decree rites and ceremonies and authority in controversies of faith? The meeting must be one in which laymen have their appropriate representation, and I cannot assent to the view that apart from a representation of laymen, either bishops or clergy or the Houses of Convocation should be regarded as having exclusive authority in this all-important question. I propose to state later my views as to the proper system in which a Representative Church Council can be formed.

The questions appropriate for the Church and Church alone

in order to ensure a fuller expression of spiritual independence are :—

(1) All matters of doctrine, worship, and ritual in the Church ;

(2) The right to determine all questions of membership in the Church ;

(3) The constitution of its own courts or authority by which questions of doctrine, worship, ritual, or membership may be decided.

There are other matters of considerable but less importance, which in principle might naturally fall to be determined by a Church independently of the civil power, but it is not possible to disregard the historical evolution of the Church organisation and patronage, and if the essential questions of ritual and doctrine can be settled, the way is open to a satisfactory settlement.

THE NATIONAL RECOGNITION OF RELIGION.

The XXXVIIth Article sufficiently explains the extent and limitation of the supremacy of the civil Government in matters pertaining to the Church. It states that the King hath the chief power in this realm of England, and other his dominions, unto whom the chief government of all the estates of this realm, whether they be ecclesiastical or civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign jurisdiction. This abolition of foreign jurisdiction is one essential feature of the Reformation period, and in a later part of the same Article we find the words : "The Bishop of Rome hath no jurisdiction in this realm of England." So long as the Church claims to stand for the National recognition of religion, it has no claim or reason to question the principle of the civil supremacy outside matters of ritual or doctrine. In my opinion it should be prepared on its own initiative to assist to make this supremacy nationally effective and to smooth away the anomalies which at the present time lead to friction and tend to make reform impossible.

I agree in the criticism in the Report of my colleagues on the difficulties which attach to legislative reform on matters affecting the Church under the conditions of modern Parliamentary procedure. The same difficulties are being found in various directions with the same urgent need of procedure reform. I agree further with the suggestion that the only practicable method of efficient procedure is on the initiative of a Representative Church Council, and that any measure proposed on this initiative should be referred to a Committee of the Privy Council, and that any Order of the Privy Council should be laid on the Table of both Houses of Parliament before it becomes law. The constitution of a suitable

Committee of the Privy Council for this purpose is a matter which should represent no difficulty if the principle is conceded, but it is inadvisable to enter upon details at this stage. With the exception of questions of ritual and doctrine and membership, I think that all questions of Church organisation and Church discipline might be fairly entrusted to the legislative control of the King in Council on the initiative of a Church Representative Body, and subject to the Order being laid for a certain number of days on the Table of either House of Parliament. This would strengthen the real spirit of the National recognition of religion, and give it a fuller expression, at the same time that a greater measure of Spiritual independence is assured to the Church. The Church and State would each be able to perform within their respective spheres their special duties in a more efficient manner, and the risk of friction would be, as it should be, reduced to a minimum.

It is not advisable to attempt an exhaustive catalogue of all the matters which would fall to be determined by the civil Government on the initiative of a Representative Church Council, but they would include the following:—

(1) Matters of organisation, including the creation of new bishoprics, or the alteration of existing ecclesiastical boundaries;

(2) The method of election, and confirmation of the greater officers of the Church;

(3) Patronage;

(4) Discipline. Assuming that matters of ritual and doctrine are no longer matters within the sphere of civil control, there should be no veto in the Bishops, and the "National recognition of religion" should imply a National power of discipline;

(5) Reform of Convocation;

(6) Constitution of Representative Church Council and of Parochial Church Councils.

REPRESENTATIVE CHURCH COUNCIL.

I regret that I am unable to agree with the opinion of my colleagues as to the constitution of a Representative Church Council. On the proper constitution of such a body the whole fabric of Church reform must rest. After numerous committees and much consultation, a scheme has been adopted by the present Representative Church Council, under the guidance of members of constitutional knowledge and practical experience. It is hardly

possible that such a scheme should meet with universal approval, but it represents a practicable solution which Churchmen have approved in the only body in which their voice can be effectively heard at the present time. I think it would be a mistake to attempt to alter this constitution at the present time in any way, whatever the ultimate form may be. I regard the suggestion as to students and workers as inadmissible, but whatever the merit of this proposal may be, it should be left open for discussion at a later date. I regret also to be unable to agree to the suggestions made in reference to Parochial Councils. I desire to enter an earnest protest against the idea of excluding the incumbent and separating the functions of clergy and laity in matters of ordinary parochial church organisation. No ground is put forward which justifies such a proposal, and it would not promote the cordial co-operation on which the success of religious work in a parish so largely depends.* I further dissent from the proposal to place the organisation of Parochial Councils under the regulations of a special statute.

* See page 298.

APPENDICES.

APPENDIX I.

ORDER OF PROCEDURE UNDER THE PROPOSED SCHEME.

1. A Joint Committee of the four Houses of Convocation and of the two Houses of Laymen to frame a scheme for the constitution of the Church Council and Parochial Church Councils.

2. The scheme so framed to be submitted to and approved by the Representative Church Council and transmitted to the Archbishops to be laid before the Convocations.

3. The Representative Church Council to be dissolved, and the new Church Council and Parochial Church Councils to be elected and formally constituted.

4. The Convocations to secure the necessary authority from the Crown to present the Constitution to the Crown in a Report.

5. The Convocations formally to adopt the Constitution and lay it before the Crown in the form of a Report, with a request that the Report may be laid before Parliament.

6. Enabling Bill to be presented to Parliament and passed.

7. The Church Council to present measures under the Act declaring the right of the Convocations to reform themselves, and giving powers to Parochial Church Councils. When the former of these measures has obtained the force and effect of an Act of Parliament, the Convocations to amend the Constitution of their Lower Houses in conformity with that of the new Church Council.

APPENDIX II.

DRAFT OF THE CONSTITUTION OF THE CHURCH COUNCIL.

1. There shall be constituted a Church Council to deliberate on all matters concerning the Church of England and to make provision in respect thereof.

2. The Church Council shall consist of three Houses, that is to say, The House of Bishops, The House of Clergy, and The House of Laymen.

3. The House of Bishops shall consist of all Diocesan Bishops of the Provinces of Canterbury and York.

4. The House of Clergy shall consist of representatives of the clergy of the Provinces of Canterbury and York elected in accordance with the provisions of Schedule A attached hereto.

5. The House of Laymen shall consist of representatives of the laity of the said Provinces elected in accordance with the provisions of Schedule B attached hereto.

6. The functions of the Church Council shall be as follows :—

(A) The Council may in all matters concerning the Church of England exercise such legislative and other powers as may be conferred upon it by statute :

Provided that no measure shall be deemed to be passed by the Council until it shall have received the assent of a majority of the members present of each of the three Houses thereof and, in case of a measure to alter the Constitution of the Council, of a majority of two-thirds of such members :

Provided further that any measure touching doctrinal formulæ or the services or ceremonies of the Church of England or the administration of the Sacraments or

sacred rites thereof shall be initiated only in the House of Bishops, shall be debated and voted upon by each of the three Houses sitting separately, and shall then be either accepted or rejected by the Council in the terms in which it is finally proposed by the House of Bishops.

(B) The Council or any of the three Houses thereof may debate and formulate its judgment by resolution upon any matter concerning the Church of England or otherwise of religious or public interest:

Provided that no such resolution shall be deemed to be a resolution of the Council as a whole unless it be passed by a majority of the members present of each of the three Houses:

Provided further that it does not belong to the functions of the Council to issue any statement purporting to define the doctrine of the Church of England on any question of theology, and no such statement shall be issued by the Council.

(C) The Council may from time to time make such standing orders for the meetings, procedure and business of the Council as are not inconsistent with its Constitution, and the Council may revoke or alter any such standing order.

(D) The Council may by standing order provide for joint sittings of the Council or any two Houses thereof.

7. Every measure passed by the Church Council in accordance with the provisions of this Constitution shall be committed to a committee of the Council styled the Legislative Committee and including members of all three Houses, and the Legislative Committee shall thereupon take such action as may be authorised by statute in order that such measure may become law.

8. Nothing in this Constitution, nor in any proceeding of the Council, shall interfere with the exercise by the Episcopate of the powers and functions inherent in them.

9. There shall be an election of the Houses of Clergy and Laymen every three years and the Council shall assemble annually in session.

Subject to the provisions of this Constitution, the Houses of Clergy and Laymen shall be elected, and the Council shall assemble in session, at such times and places as the Council shall provide, or, in the absence of such provision, at such times

and places as the Archbishops of Canterbury and York shall direct:

Provided that, at any time when the Council is not in session, the Archbishops of Canterbury and York may summon it for a special session.

10. In all joint sittings of Houses any motion may be voted on by show of hands of the whole assembly, and the vote of the majority thereupon shall, unless a division be demanded, be deemed to be the vote of a majority of each several House. A division may be demanded by any ten members before or immediately after the show of hands, and in that case the motion shall not be deemed to be carried unless it receive the assent of a majority of the members present of each several House:

Provided that motions relating to the conduct of business only shall be determined by the vote of the majority of the assembly as a whole.

11. The Archbishop of Canterbury, or in his absence the Archbishop of York, or in his absence the Bishop next in precedence present and willing to act, shall be chairman of meetings of the Council and of the House of Bishops when sitting separately or with another House.

12. The House of Clergy and the House of Laymen shall each elect a chairman to preside over them. When they sit together they shall elect a chairman for the occasion.

13. Subject to this Constitution and to any Standing Orders from time to time made by the Council with reference thereto, the business and procedure at any meeting of the Council or of any two Houses sitting together or of any House sitting separately shall be regulated by the chairman thereof.

14. In the event of the Church Council receiving statutory powers in regard to legislation, it shall, before entering on any other legislative business, make further provision for the self-government of the Church by passing through the Church Council measures—

(A) Declaring that the Convocations of Canterbury and York have power, by canons lawfully passed and promulged, to amend the Constitutions of the Lower Houses thereof;

(B) Conferring upon the Parochial Church Councils constituted under Schedule B of this Constitution such powers as the Church Council may determine.

SCHEDULE A.

COMPOSITION AND ELECTION OF THE HOUSE OF CLERGY.

1. Subject to the modifications hereinafter contained, the qualifications of electors and members of the House of Clergy of the Church Council shall be the same as they now are in the case of electors and proctors of the Lower Houses of Convocation in the Provinces of Canterbury and York respectively.

2.—(1) In both Provinces two members shall be elected to represent the clergy of each archdeaconry.

(2) All priests who are duly authorised to officiate in any diocese in the Province, and are not members of Cathedral Chapters, shall be entitled to vote at the elections of members to represent the clergy of the archdeaconry in which they reside and themselves to become members, if elected.

(3) In the case of Cathedral Chapters the deans shall not be *ex officio* members of the House of Clergy, but each Chapter shall elect one member to represent it, such member being the dean or any other member of the Chapter or other person duly qualified to sit in the House of Clergy.

3. Rules for the conduct of elections, which shall follow as nearly as is practicable the procedure customary at elections to the Lower Houses of Convocation in the Provinces of Canterbury and York respectively, shall be framed by the Archbishops for their respective Provinces, and any question as to the qualification of an elector or member or the conduct of any election shall be determined by the Archbishop of the Province in which such question arises.

SCHEDULE B.

RULES FOR THE REPRESENTATION OF THE LAITY.

SECTION I.

Definitions.

1. In these rules—

"Qualified electors" means persons entitled to be entered on the electoral roll of a parish, whether such persons be actually so entered or not;

"Representative electors" means electors who are themselves elected to act in the capacity of electors, and include wage-earners and students selected in accordance with these rules;

"Parish" means an ecclesiastical parish or district, whether old or new, the minister of which has a separate cure of souls therein;

"Minister" means the incumbent, perpetual curate or curate-in-charge of such ecclesiastical parish or district;

"Ruri-decanal Conferences" means assemblies of clergy and laymen elected in the several rural deaneries in the manner hereinafter provided, and meeting periodically under the presidency of the rural dean;

"Diocesan Conferences" means assemblies of clergy and laymen elected in the several dioceses in the manner hereinafter provided, and meeting periodically under the presidency of the bishop.

Words importing residence import an abode of a permanent and not merely of a casual or temporary nature.

Section II.—General Rules.

Church Assemblies.

2. The laity shall be represented (i.) in Parochial Church Councils; (ii.) in Ruri-decanal Conferences, where they exist; (iii.) in Diocesan Conferences; and (iv.) in the Lay House of the Church Council.

3. All representatives must be actual lay communicant members of the Church of England above twenty-one years of age, but, except in the case of Parochial Church Councils, need not be qualified electors in the area by or for which they are elected. No candidate may be elected at any election who has not previously consented to serve in the capacity for which he or she is a candidate. All representatives must be of the male sex, except in the case of Parochial Church Councils.

Section III.—Parochial Organisation and Elections.

Electoral Roll.

4. In every parish a roll of electors shall be formed, on which persons claiming to be qualified electors in the parish shall, if

their claim is allowed, be entered; and they shall remain on the roll so long as their title to be qualified electors in the parish continues. The roll shall be formed in the first instance by the minister and churchwardens (if any), and shall be kept and revised by the Parochial Church Council when it is constituted. It shall be annually revised not more than one month before the annual Parochial Church Meeting. Notice of such revision shall be affixed at the place or places hereinafter prescribed with respect to notice convening the Parochial Church Meeting fourteen days at least before such revision takes place, and no person not entered upon the electoral roll as so revised shall nominate a candidate or vote or demand a poll in the ensuing election.

5. Qualified electors in a parish are the following lay members of the Church of England—

(1) Persons above twenty-one years of age resident in the parish who—

(i.) either—

(*a*) are actual communicants of the Church of England;

or

(*b*) have been baptized and confirmed and are admissible to Holy Communion, and do not belong to any religious body which is not in communion with the Church of England; and

(ii.) have signed the declaration set forth in the First Schedule to these rules; and

(iii.) are not entered as non-resident electors on the electoral roll of a neighbouring parish under these rules.

(2) Non-resident electors who, under these rules, are entered on the electoral roll of the parish.

Non-Resident Electors.

6.—(A) A qualified elector in a parish who has during a period of one year preceding the date of application habitually attended public worship in the church of a neighbouring parish in which he or she does not reside may apply to the parochial officer of such parish to be entered on the electoral roll of that parish instead of that of the parish in which he or she resides.

(B) The application must be in writing in the form set forth

in the Second Schedule to these rules, and must be signed by the applicant, and be accompanied by a certificate signed by the parochial officer of the parish in which the applicant resides that the application has been noted in such parish.

(c) The application shall be considered by the Church Council of the neighbouring parish at their next meeting, and shall be allowed if the statements contained therein appear to be correct; and the application shall be thereupon endorsed by the parochial officer "Allowed" or "Disallowed," as the case may be, and notice of such endorsement given to the parochial authority of the parish in which the applicant resides.

(d) When an application has been allowed, the applicant, until the same is cancelled, shall be entered on the electoral roll of the neighbouring parish as a qualified elector instead of that of the parish in which he or she resides.

(e) If at any time the applicant ceases habitually to attend public worship in the church of the neighbouring parish the entry shall be cancelled by the Parochial Church Council, and on proof of such cancellation the applicant, if still qualified, may be entered on the electoral roll of the parish in which he or she resides.

(f) Any disallowance of an application or cancellation of an entry under this rule shall be subject to appeal to the Appellate Authority constituted by Rule 13 of these rules.

In this rule "parochial officer" means the secretary of the Parochial Church Council or other officer appointed by it for the purposes thereof.

Parochial Church Meeting.

7.—(1) In every parish there shall be held annually, not later in the year than in the week following Easter week, a Parochial Church Meeting of qualified electors of the parish for the purpose of electing such number of parochial lay representatives to the Church Council of the parish as the Parochial Church Meeting may determine, the number being alterable from time to time by such meeting, but so that the alteration shall not take effect till the following annual meeting:

Provided that, in the case of a parish of which the population does not exceed three hundred, the lay members of the Church Council shall, if the Diocesan Conferences so determine, consist of all lay persons entered upon the electoral roll, and, in that case, no Parochial Church Meeting shall be held.

(2) In addition to the qualified electors all other residents between the ages of sixteen and twenty-one years who would, if of full age, be qualified electors may attend the meeting.

Convening of Parochial Church Meeting.

8. The meeting shall be convened by the minister of the parish, by notice in the form set forth in the Third Schedule to these rules, and affixed at or near the principal door of the church, or other building licensed for divine service in the parish, for a period including the two Sundays immediately preceding the day of meeting, and shall be held in such place within the parish, and at such date and hour as shall be stated in the notice.

Chairman.

9. The convener, if present, and if not a chairman chosen by and from among the electors present, shall preside at the meeting, but no clerical chairman shall have a vote (except a casting vote) in the election of the parochial lay representatives.

Elections.

10.—(1) Candidates must either previously to the meeting by written notice to the convener thereof or at the meeting be nominated by one elector and seconded by another.

(2) If more candidates are nominated than there are seats to be filled, the election shall take place at the meeting unless a poll is demanded by at least one-fourth of the voters present at the meeting.

(3) If a poll is duly demanded the voters present at the meeting shall forthwith elect a person to preside over it, and the poll shall be conducted in the manner prescribed in the Fourth Schedule to these rules.

(4) At every election each elector on the roll shall have as many votes as there are persons to be elected, but may not give more than three votes to one candidate.

(5) Where an equality of votes renders a casting vote necessary to decide the election, it shall be given by the person presiding over the election.

Announcement of Result.

11.—(1) The result of an election shall be forthwith announced by the person presiding over the election, and a notice of the result shall be affixed at the place or places hereinbefore prescribed with respect to notice convening the meeting, and shall bear the date of its being so affixed; and the notice shall be left so affixed for not less than seven days; and the result (unless the rural dean is himself the person announcing the result) shall be reported in writing to the rural dean, or, in case of there being no rural dean, to the archdeacon.

(2) Any voter shall be entitled to ascertain, by enquiry of the presiding officer within four days of the declaration of the result, whether his vote has been allowed or not, and a notice to that effect shall be appended to all notices announcing the result of the election.

Appeals.

12. Any appeal against the allowance or disallowance of enrolment on the electoral roll or of a vote, or against the report of the result of the election, if made to the rural dean or (if there be no rural dean) to the archdeacon, in writing within seven days after the date of such allowance or disallowance or the publication of such result, as the case may be, shall be considered and decided by such person or persons being lay communicants as shall be appointed by the rural dean or the archdeacon, as the case may be, and this decision shall be final. For the purpose of such consideration and decision, the appointed layman shall be entitled to inspect the voting papers and all other documents and papers connected with the election, and to be furnished with all information respecting the same which he may require.

Section IV.

Elections to Ruri-decanal and Diocesan Conferences.

13.—(1) The representatives elected as provided in Section III., Clause 7, together with [the minister of the parish and]* the churchwardens (if any), being communicant members of the Church of England, shall constitute the Parochial Church Council of the parish.

The Parochial Church Council of each parish shall meet each year at some date not more than fourteen days after the meeting

* See Report, page 48.

of the Parochial Church Meeting (or, if there be no such meeting, not more than four weeks after Easter) to elect such number of lay representatives to the Ruri-decanal Conference (if any) and to the Diocesan Conference as the Diocesan Conference shall from time to time appoint :

Provided that the parochial lay representatives in the Ruri-decanal Conferences shall annually elect the lay representatives to the Diocesan Conference in cases where, owing to the size of the diocese, the Diocesan Conference determines that parochial election is impracticable, and in such cases each rural deanery shall elect such number as the Diocesan Conference shall from time to time appoint.

Elections to the House of Laymen.

14. The members of the House of Laymen in the Church Council shall be elected every three years by the representative electors in the several Diocesan Conferences.

15. The representative electors shall be—

(1) The lay representatives for the time being in the several Diocesan Conferences.

(2) Wage-earners selected by the Diocesan Conference to a number not less than 5 per cent. of the lay representative electors in the Diocesan Conference to represent those churchmen and churchwomen of the diocese, of all grades, who work for a weekly, daily, or occasional wage.

(3) Students, selected by the Diocesan Conference to represent the churchmen and churchwomen of Universities, University and Training Colleges, and School Staffs in the diocese.

16. The representative electors shall be entitled to elect one member of the House of Laymen for every complete 100,000 of the population of the diocese as ascertained at the last decennial census, and one member for an incomplete 100,000.

17. A Diocesan Conference may for electoral purposes divide a diocese into two or more areas and apportion the number of members of the House of Laymen to be elected by the diocese among such areas, and, in that case, the Conference of the Diocese shall apportion such wage-earners and students as are selected to be representative electors among the several areas, and the election shall be conducted in each several area as if such area were a separate diocese.

Conduct of Elections by Representative Electors.

18. At every election of representatives by representative electors the presiding officer shall be—

(*a*) In the case of a Parochial Church Council, the chairman thereof or a deputy appointed by him;

(*b*) In the case of a Ruri-Decanal Conference, the rural dean or a deputy appointed by him;

(*c*) In the case of a Diocesan Conference, the Bishop of the diocese or a deputy appointed by him;

(*d*) In the case of a Diocesan Area created under Rule 18, such officer as the Bishop may appoint.

19. For every election of representatives by representative electors a meeting of such electors shall be held, at which the names of candidates then or previously nominated by one, and seconded by another, of the electors shall be received. If more candidates are nominated than there are seats to be filled, the election shall be decided at the meeting, unless a poll is demanded by one-fourth of the electors present at the meeting; in which case the election shall be conducted by voting papers sent by post or otherwise delivered to the presiding officer:

Provided that in the case of elections to the House of Laymen in any diocese, the Diocesan Conference may determine that in lieu of a meeting of electors being held, the names of candidates duly nominated and seconded may be sent in to the presiding officer on or before a specified date, and that if more candidates are nominated than there are seats to be filled, the election shall be conducted by voting papers in like manner as if a meeting had been held and a poll had been demanded.

20. At every election of representatives each elector shall have as many votes as there are persons to be elected, but may not give more than three votes to any one candidate.

Section V.—Supplementary Provisions.

21. Elections to fill up casual vacancies among representatives shall be conducted in the same manner as ordinary elections, a special meeting of the electing body being held, if necessary, for the purpose. They shall where possible be held before the representatives are called upon to take part in the election of representatives to another assembly; but such election shall not be invalidated by reason of any casual vacancies not having been so filled up.

22. The Bishop of the diocese may from time to time make provision for matters not herein provided for, and if from any cause there is neglect or default on the part of any person in carrying out any duty assigned to him in the election by these rules, the Bishop may appoint any other person to carry out that duty in the election, and may for that purpose extend or alter the time for the election and otherwise vary the procedure thereof as he shall think fit, or, if there has been no valid election, he may order a fresh election and give such directions as may be necessary for the purpose of holding such election.

THE FIRST SCHEDULE.

Declaration as to Qualification.

I of
declare that I am a qualified elector of the parish of
in accordance with the note set forth below, and I desire to be entered on the electoral roll.

[N.B.—Qualified electors in a parish are the following lay members of the Church of England: (1) Persons above twenty-one years of age resident in the parish who (i.) *either* (*a*) are actual communicants of the Church of England *or* (*b*) have been baptized and confirmed and are admissible to Holy Communion, and do not belong to any religious body which is not in communion with the Church of England, (ii.) have signed the above declaration, and (iii.) are not non-resident electors on the electoral roll of a neighbouring parish; (2) non-resident electors who, under the rules, are for the time being entered on the electoral roll of the parish.]

THE SECOND SCHEDULE.

I [*full Christian name and surname*] of [*full address of residence*] being a qualified elector in the ecclesiastical parish of
in the diocese of hereby apply to be entered on the electoral role of the ecclesiastical parish of in the diocese of instead of that of the said parish in which I reside, and I declare that for the period of one year last past I have habitually attended public worship in the church of the said parish of
and not in the church of the said parish in which I reside, and I declare

that after this application has been allowed, and until it is cancelled, I will not attempt to vote for parochial representatives in the above-named parish in which I reside.

Signed

Date

This application has been noted in the above-named ecclesiastical parish of

Signed

Secretary of Parochial Church Council of the parish in which the applicant resides.

THE THIRD SCHEDULE.

Notice of Parochial Church Meeting.

Parish of

A Church Meeting will be held in on day, the of at p.m. for the election [of parochial lay representatives to the Parochial Church Council and] of parochial lay representatives to the Ruri-decanal Conference by the qualified electors upon the electoral roll of the parish and for the consideration of other parochial Church matters.

All persons in the parish who have been baptized and confirmed and are admissible to Holy Communion, and do not belong to any religious body which is not in communion with the Church of England, are invited to attend the meeting; but only qualified electors duly entered upon the electoral roll of the parish have the power of voting.

[N.B.—Qualified electors in a parish are the following lay members of the Church of England: (1) Persons above twenty-one years of age resident in the parish who (i.) *either* (*a*) are actual communicants of the Church of England, *or* (*b*) have been baptized and confirmed and are admissible to Holy Communion, and do not belong to any religious body which is not in communion with the Church of England, (ii.) have signed the prescribed declaration as to qualification, and (iii.) are not non-resident electors on the electoral roll of a neighbouring parish; (2) non-resident electors who, under the rules, are for the time being entered on the electoral roll of the parish.

Parochial representatives must be actual lay communicant members of the Church of England above twenty-one years of age. Representatives on the Parochial Church Council must be qualified electors, but may be of the female sex. Other representatives must be of the male sex, but need not be qualified electors.]

THE FOURTH SCHEDULE.

Conduct of Poll at Parochial Elections.

1. The Chairman of the meeting shall fix a day (not being less than seven nor more than fourteen days from the day of the meeting) and hours, and a place or places for the taking of the poll, and shall cause a notice of the poll, and of the day and hours and place or places thereof signed by himself, to be forthwith affixed at the place or places in the rules prescribed with respect to a notice convening the meeting, and the same shall remain so affixed until after the day of the poll. The hours of the poll must not be less than four, which need not be consecutive; but not less than two hours thereof must be before and not less than two hours thereof must be after six of the clock in the afternoon.

2. Votes may be tendered by the voter in person by a voting paper signed by him or her in the form set forth in the Fifth Schedule to the rules, or to the like effect, or by voting papers addressed to the person presiding over the election in the parish and sent by post to or otherwise delivered at the place in the parish fixed for the taking of the poll, and received by him at any time between the holding of the meeting and the hour appointed for the close of the poll.

3. After the close of the poll the votes shall be scrutinized and counted in one place by the presiding officer in the presence of such of the candidates for election, or persons deputed to attend on their behalf, as desire to be present.

THE FIFTH SCHEDULE.

Form of Parochial Voting Paper.

Parish of I [*full Christian name and surname*] of [*address*], in the ecclesiastical parish of hereby vote for the following as parochial representatives of the above-named parish [*or* grouped parishes], namely:—

Signed

Date

[N.B.—Only persons on the electoral roll are entitled to vote. They may vote, in the case of each separate election, for as many candidates as there are seats to be filled, but may not give more than three votes to any one candidate.]

APPENDIX III.

DRAFT OF ENABLING BILL CONFERRING STATUTORY POWERS UPON THE CHURCH COUNCIL.

A

BILL

To confer powers on the Church Council constituted in accordance with the Constitution attached to the Reports of the Convocations of Canterbury and York presented to His Majesty on the day of 19 ; and for other purposes connected therewith.

WHEREAS His Majesty has been pleased to authorise the Convocations of Canterbury and York to consider the method of legislating in matters concerning the Church of England and to make report to His Majesty thereon :

And whereas the Convocations of Canterbury and York have made Reports accordingly and have recommended that subject to the control and authority of His Majesty and of the two Houses of Parliament powers in regard to legislation touching matters concerning the Church of England shall be conferred on the Church Council constituted in the manner set forth in identical terms in the Schedules attached to their several Reports :

And whereas it is expedient subject to such control and authority as aforesaid that such powers should be conferred on the Church Council so constituted :

Be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :—

Definitions.

1.—In this Act—

(1) "The Church Council" means the Council constituted in accordance with Part I. of the Constitution set forth in the Schedules attached to the Reports made by the Convocations of Canterbury and York to His Majesty on the day of 19 and laid before both Houses of Parliament by His Majesty's command on the day of 19 .

(2) "The Constitution" means the Constitution of the Church Council set forth in the Schedules attached to the Reports made by the Convocations of Canterbury and York to His Majesty as aforesaid.

(3) "The Legislative Committee" means the Legislative Committee of the Church Council appointed in accordance with the provisions of the Constitution.

(4) "The Ecclesiastical Committee" means the Committee of His Majesty's Privy Council established as provided in Section 2 of this Act.

(5) "Measure" means a legislative measure intended to receive the Royal Assent and to have effect as an Act of Parliament in accordance with the provisions of this Act.

Establishment of an Ecclesiastical Committee of the Privy Council.

2.—(1) There shall be a Committee of His Majesty's Privy Council styled The Ecclesiastical Committee of the Privy Council.

(2) The Ecclesiastical Committee shall consist of such members of the Privy Council not exceeding twenty-five in all as His Majesty from time to time may think fit to appoint in that behalf.

(3) The powers and duties of the Ecclesiastical Committee may be exercised and discharged by any twelve members thereof.

Measures passed by Church Council to be submitted to Ecclesiastical Committee.

3.—(1) Every measure passed by the Church Council in accordance with the provisions of the Constitution shall be submitted by the Legislative Committee to the Ecclesiastical Committee together with such comments and explanations as the Legislative Committee may deem it expedient or be directed by the Church Council to add.

(2) The Ecclesiastical Committee shall thereupon consider the measure so submitted to it and may at any time during such consideration either of its own motion or at the request of the Legislative Committee invite the Legislative Committee to a

Conference to discuss the provisions thereof and thereupon a Conference of the two Committees shall be held accordingly.

(3) After considering the measure the Ecclesiastical Committee shall draft a Report thereon to His Majesty advising that the Royal Assent ought or ought not to be given to it and stating the reasons for such advice.

(4) The Ecclesiastical Committee shall communicate its Report in draft to the Legislative Committee but shall not present it to His Majesty until the Legislative Committee signify its desire that it should be so presented.

(5) At any time before the presentation of the Report to His Majesty the Legislative Committee may either on its own motion or by direction of the Church Council withdraw a measure from further consideration by the Ecclesiastical Committee.

(6) A measure passed in accordance with this Act may relate to any matter concerning the Church of England and may extend to the amendment or repeal in whole or part of any Act of Parliament including this Act.

Procedure on measures reported on by the Ecclesiastical Committee.

4. When the Ecclesiastical Committee shall have reported to His Majesty on any measure presented by the Legislative Committee the Report together with the text of such measure shall be laid before both Houses of Parliament within fourteen days if Parliament be then sitting or if not then within fourteen days after the next meeting of Parliament and thereupon—

(A) If the Ecclesiastical Committee shall have advised His Majesty to give his Royal Assent to the measure then unless within forty days either House of Parliament shall direct to the contrary such measure shall be presented to His Majesty and shall have the force and effect of an Act of Parliament on the Royal Assent being signified thereto;

(B) If the Ecclesiastical Committee shall have advised His Majesty that the measure ought not to receive the Royal Assent no further proceedings shall be taken thereon:

Provided that if both Houses of Parliament within forty days so direct such measure shall be presented to His Majesty and on the Royal Assent being signified thereto shall have the force and effect of an Act of Parliament.

Short title.

5. This Act may be cited as "The Church Council Enabling Act 19 ."

APPENDIX IV.

MEMORANDUM ON THE OTHER CHURCHES OF THE ANGLICAN COMMUNION.

THE CHURCH OF ENGLAND IN THE EAST INDIES.

I.—*A Branch of the Established Church in England.*

This is a legally established branch of the Church of England *quâ* the English population in the East Indies, and in particular the English Army and Civil Service.

Apart from this, the Church of England undertakes missionary work in India just as any other voluntary Christian community. Originally the Crown, by charter to the East India Company (1698), required them to provide a minister approved by the Archbishop of Canterbury or the Bishop of London, and a proper place set apart for Divine service only in every "garrison" and "superior factory" and in every ship of 500 tons burden or upwards. Then the Crown was empowered by statute (East India Company Act, 1813) to grant to a bishop in respect of a see created under letters patent with three archdeaconries (Calcutta, Madras, Bombay) ecclesiastical jurisdiction and incidental powers of admission to Holy Orders, superintendence, and government, and to grant pensions after 15 years' service, while the Company was at the same time required to pay the requisite salaries and travelling expenses. Thus was constituted the See of Calcutta.

The earlier letters patent are set out in H. Abbott's *Bishoprics in the East Indies* (1845). The British territories in India were thereby constituted and ordained to be a bishop's see to be called the Bishopric of Calcutta, and to be subject and subordinate to the Archiepiscopal See of Canterbury in the same manner as any bishop of any see within the Province of Canterbury, *except in the matter of appeals* from judgments, decrees, and sentences pronounced by the Bishop of Calcutta which were to be to the Crown, for which purpose the judges of the Supreme Court at Calcutta and the members of Council there were con-

stituted the King's Commissioners-Delegate to hear appeals, and finally to decide and determine them in as ample manner and form as the Commissioners appointed under the Great Seal by virtue of the statute of 25 Henry VIII. (see the Act of Submission, 1533-4). Apart from this, the Supreme Courts at Calcutta, Madras, and Bombay were empowered to interfere by prohibition or *mandamus* subject in general to the same laws, restrictions, and rules of practice as appertain to the High Court in England in regard to proceedings in the Ecclesiastical Courts in England.

The Civil Courts and the Governors, Judges, Justices, as well as the Ministers and other subjects of the Crown in India were also directed to aid and assist the bishop and archdeacons "in the execution of the premises in all things."

II.—*The powers originally conferred on the Bishop of Calcutta* (see the L. P., 2nd May, 1814).

1. To ordain (as to which see 4 Geo. IV., c. 71, s. 6) and confirm and perform all the other functions peculiar to a bishop within the limits of the see.

2. To exercise personally or by commissary jurisdiction spiritual and ecclesiastical in and throughout the see and diocese according to the Ecclesiastical Laws of England. Thus he can hold a consistory court and pronounce sentence of suspension and deprivation.

3. To institute and to grant licences to officiate (also to collate to archdeaconries).

4. To exercise visitatorial authority over ministers, and to administer oaths.

5. To hold property as a body corporate and to have a corporate seal.

6. To resign his see into the hands of the Crown (the Crown exercising the right of appointment and also of recall).

III.—*Extension of the Diocese of Calcutta.*

By letters patent dated 27th May, 1823, the Diocese of Calcutta was extended so as to comprise all the territories of the Crown comprised within the limits of the Charter of the East India Company, and Bishop Heber was appointed bishop of the diocese. In 1869, however, the Straits Settlements were cut off from the diocese (see 32 and 33 Vict., c. 88).

IV.—*Foundation of the Sees of Madras and Bombay.*

In 1833 the Crown was empowered by statute (Government of India Act, 3 & 4 Will. IV., c. 85) to create the Sees of Madras and

Bombay, the salaries to be paid by the Company, and to constitute the Bishop of Calcutta metropolitan, subject, however, to the general superintendence and revision of the Archbishop of Canterbury. The new bishops on appointment or consecration to take an oath of obedience to the Bishop of Calcutta.

There was also a provision (sec. 99) enabling the Archbishop of Canterbury, if so required by the Crown, to commission the Indian bishops to consecrate any person appointed to the See of Calcutta, Madras, or Bombay, and being at the time of appointment resident in India.

Accordingly letters patent were issued on 13th June, 1835, and 1st October, 1837, whereby Madras and Bombay were respectively severed from the See of Calcutta and constituted separate episcopal sees, subject to the jurisdiction of the Bishop of Calcutta as metropolitan, who was empowered to visit once in every five years, and oftener if need be, and to entertain appeals from sentences of the suffragan bishops, and to finally decide and determine the same in as ample a manner as any of the Archbishops of England may hear and determine appeals from the courts of the bishops within their province. The powers vested in the new bishops were similar to those originally conferred on the Bishop of Calcutta as diocesan bishop.

The Archdeacons of Madras and Bombay were made subject to and commissaries of the Bishops of Madras and Bombay respectively.

V.—*State Endowment.*

1. The Bishops and Archdeacons of Calcutta, Madras, and Bombay [all bodies corporate with perpetual succession—the bishops being appointed by the Crown (which also regulates their absence on furlough or medical certificate), and the archdeacons being collated by their bishops] are wholly paid in the shape of salaries, pensions, allowances, visitation expenses, &c., out of the revenues of India as fixed by the Secretary of State in Council [see Acts of 1813 and 1833, supplemented by the Bishops' Pensions, &c. (India), Act, 1823, the Salaries and Pensions Act, 1825, the Bishops (India) Act, 1842, the Indian Bishops Act, 1871, and the Indian Salaries and Allowances Act, 1880— (by the last-named Act the Secretary of State was enabled to fix, alter, or abolish the allowances originally authorised for equipment and voyage out)—see, too, the Civil Service Regulations, cap. xxvii., India Office List, 1915]. In fact the original Colonial bishops were "little more than Government chaplains in Episcopal Orders" (*Encycl. Brit., Tit. Angl. Comm.*).

2. The Bishops of Lahore, Rangoon, Lucknow, and Nagpur (who are on the Bengal Ecclesiastical Establishment) are paid on the scale applicable to senior chaplains. The remainder of their

salary is made up from the interest of an endowment raised by the Church itself. These four bishops, but not their archdeacons, are bodies corporate with perpetual succession.

3. Chaplains and ministers on the Regular Establishment are appointed by the State, and receive salaries, allowances, and pensions under the Civil Service Regulations (see India Office List, 1915, pp. 209, 311, 314, 353, 357).

State provision was made for chaplains of the Church of Scotland under the Act of 1833 (sec. 102), which also provided that nothing therein contained should prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion, or community of Christians, not being of the Church of England or the established Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

In 1876 increased allowances to Roman Catholic chaplains were recommended on the ground that the Government of India recognise the duty within reasonable limits of providing religious ministrations for British-born European servants of the Crown, and especially for soldiers and their families. Presbyterian chaplains were appointed in 1822; and Roman Catholic clergy for ministrations to troops were in receipt of State stipends in 1828.

The concurrent recognition and endowment of the Church of England, the Church of Rome, and the "Union Church" bodies in India, each to have full control of their funds and of the executive administration of their respective Churches, all exclusively military churches to be retained and kept in repair by the State, was advocated in 1892 by Sir T. C. Hope, K.C.S.I., C.I.E. (*Indian Church Quarterly Review*), in answer to an attack on the ecclesiastical establishment in India, which commenced in 1883.

4. The rest of the bishops and clergy of the Church of England are neither appointed nor paid by the State. In some places, however, clergy who minister to European congregations where there are no establishment chaplains are assisted by grants in aid from Government which vary from province to province.

5. The registrars of the seven dioceses constituted under letters patent are paid by the State.

6. Many of the churches for Europeans have been wholly or partly provided and are wholly maintained by the State. But all the churches and buildings of the missions have been erected and are maintained by the Church societies or by the Indian Christians.

VI.—*The subsequent Sees.*

(A) The Sees of Lahore, Rangoon, Lucknow, and Nagpur have been created under the powers in that behalf conferred on the Crown by the Act of 1833 (sec. 93). As we have seen, these sees are partly endowed by the State, and the bishops are appointed by the State.

(B) The See of Travancore and Cochin was created as a missionary see under the Jerusalem Bishopric, 1841, the Archbishop of Canterbury appointing and receiving letters of licence to consecrate.

(C) The remaining sees, viz., those in Assam, Chota Nagpur, Tinnevelly and Madura, and Dornakal (whose bishop is the first native Indian bishop to be appointed) have not been created under letters patent, and remain, legally speaking, part of the diocese to which they originally belonged. They are at once conventional and subordinate sees, and are administered under episcopal commission.

VII.—*The Government of India Act*, 1915.

This enactment has effected the consolidation of all the preceding enactments relating to the Government of India, and contains in Part X. (secs. 115-123 inclusive) the provisions (without amendment) of the Acts above mentioned relating to the jurisdiction of Indian bishops, the metropolitanate, the variation of the limits of the original dioceses, the power to admit to Holy Orders, the consecration of bishops in India, the salaries and allowances of bishops and archdeacons, pensions, furlough rules, chaplains of the Church of Scotland, &c.

VIII.—*Ceylon.*

Ceylon was made part of the Diocese of Calcutta, and the Archdeaconry of Colombo was constituted and subjected to the jurisdiction of the Bishop of Calcutta by letters patent (27th Sept., 1817). Afterwards by letters patent (13th June, 1835) Ceylon was dissevered from the Diocese of Calcutta, and pending the creation of a separate see at Colombo was constituted part of the Diocese of Madras, the metropolitan powers of the Bishop of Calcutta being declared to extend to the archdeacons and clergy of Colombo, as well as to those of Madras.

The See of Colombo was created by letters patent in 1845.

Colonial ordinances have been made from time to time to regulate the temporal affairs of the Episcopal Churches in the island (see in particular Ordinances No. 12 of 1846, No. 3 of 1883, No. 30 of 1890, No. 3 of 1894).

The Creation of a Synodal System for Ceylon.

In 1881 provision was made for the prospective abolition of the salaries and allowances payable to the bishop and other ecclesiastical persons of the Church of England out of the Colonial Treasury (Ordnance No. 14 of 1881), and ultimately (Ordinance No. 6 of 1885, amended by No. 32 of 1890, and No. 17 of 1910) the bishops, clergy, and laity of the Church were empowered to hold synods in connection with their ecclesiastical affairs and to make and enforce regulations binding upon all persons who shall directly or indirectly assent thereto, but were at the same time precluded from (*a*) imposing any rate or tax; (*b*) inflicting any temporal punishment, fine, or penalty upon any person other than his suspension or removal from an ecclesiastical office or privilege; (*c*) making any rule or regulation contrary to the law of the Colony; (*d*) doing anything at variance with the doctrine and discipline of the Church of England, or that would sever the Diocese of Colombo from the Church of England.

The constitution of the first synod was prescribed. (This can be referred to with advantage.) Provision was also made for the vesting of Church property in incorporated trustees.

IX.—*Proposed Provincial Synod.*

1. The twelve East Indian sees and the See of Colombo (by ecclesiastical arrangement) together comprise the Ecclesiastical Province of India and Ceylon, and there are proposals on foot (not involving disestablishment) for the constitution of a Provincial Synod (with subordinate Diocesan Synods) of bishops, clergy, and laity, but free from the jurisdiction of the Archbishop of Canterbury.

In connexion with this it should be noted that two-thirds of the members of the Church of England in the East Indies are natives to whom ministration in accordance with the full requirements of the Ecclesiastical Law of England is not appropriate.

2. As things are a Provincial Synod cannot in point of law be convened (nor probably as regards the dioceses in the East Indies a Diocesan Synod either) without the sanction of the Crown and of the Archbishop of Canterbury; and any legislative act of such a Provincial Synod, if thus authorised to assemble, would be subject to the like sanction, and even then would not be binding on the laity (except perhaps laymen holding office in the Church).

(N.B.—The bishops and clergy of the Church of England in India and in Ceylon have no place in the English Convocations.)

3. No really adequate synodal system could be set up otherwise than under an Enabling Act, repealing incidentally part of

the existing statutes and providing for the variation to the requisite extent of the letters patent above referred to.

4. It appears to be particularly desired that—

(*a*) The bishops in India be able to consecrate such suffragan or assistant bishops as are neither appointed nor paid by the State otherwise than under a Royal mandate.

(*b*) The metropolitan be styled archbishop—the adoption of which title has been delayed through the civil obstacles involved in the State relationship.

(*c*) The decisions of the metropolitan in cases of special importance (*e.g.*, difficult points of doctrine and ritual) be referable to a Pan-Anglican tribunal.

(*d*) There be a system of consensual tribunals, set up by the Act of the Provincial Synod, if and when constituted and empowered by law, and the decisions of these tribunals be enforceable in the last resort by recourse to the civil courts, which even under the existing letters patent (see *supra*) are required to intervene in case of need, both by way of succour and restrictive action.

THE EPISCOPAL CHURCH IN SCOTLAND.

A free Church in communion with though historically distinct from the Church of England. Episcopal government formerly established was eventually displaced (1690) by Presbyterian government in the Kirk of Scotland. The dispossessed Episcopalians maintained the episcopal succession by consecrating bishops; and their right to exercise their own forms of worship was secured by the Toleration Act of 1712.

Legal Restrictions.

1. May not be a part or branch of the Church of England (established), and may not have a Crown nominee or appointee as bishop. (Act of Union, 1706.)

2. Christenings by its ministers must be duly registered. Marriages by its ministers must be preceded by banns. (*Ibid.*)

3. Its ministers must subscribe a declaration of assent to the XXXIX. Articles. This is a test of their qualifications, of which a certificate must be produced to the civil authority and notified and published as prescribed, otherwise liability to civil penalties is incurred. (Scotch Episcopalians Relief Act, 1792.)

4. Its ministers must under pain of penalties officiate openly, and pray for the King and Royal Family. Penalties attach to

those present at any episcopal meeting where the Royal Family are not prayed for. (*Ibid.*)

5. Its ministers (those ordained by Scots bishops) may not be admitted to any benefice or ecclesiastical preferment or curacy in England or Ireland without the consent of the bishop of the diocese or otherwise than on prescribed conditions. (Episcopal Church of Scotland Act, 1864.)

General Legal Position.

1. It has no courts possessing legal jurisdiction as such. The legal position of its officers and members is based on the ordinary law of contract enforceable, where the contractual relationship is established, by the ordinary civil courts. (McMillan's case, 1859, 22 D., 290; 1861, 23 D., 314; *Innes on Creeds.*)

2. It is entirely free to regulate its own affairs, but its power to vary its standard of faith and doctrines and formularies depends in point of law upon the terms of its own constitution. (*Craigdallie* v. *Aikman*, 1820, 1 Dow, 1; *Free Church of Scotland* v. *Overtown*, 1904, A. C., 515.)

3. If its property is subject to a trust instrument it can be applied only for the purposes and benefit of the persons or bodies comprised within the trust. (*Ibid.*)

4. The validity of its canons and the status of its general synod were recognised by the supreme tribunal (the House of Lords) in 1867 (*Forbes* v. *Eden*, L. R., 1 S. and D., 568); and it was later on declared in the same tribunal that the old canon law may be usefully referred to and even be authoritative in civil affairs. (Lord Watson in *Collins* v. *Collins*, 1884, 9 A. C., 247.)

The Synods.

1. *Diocesan* (Canon XLVI.).—Consists of bishop, dean, presbyters with cure, licensed presbyters of two years' standing as presbyters in Scotland. All other clergy of the diocese are also required to attend, and may express their opinions. The proceedings are, except under special circumstances so adjudged by the bishop, open to all male-communicants in the diocese, who may address the synod with the bishop's leave. No resolution of the synod has any effect unless sanctioned by the bishop. The synod meets annually. Special meetings are held when the bishop sees cause.

2. *Episcopal* (Canon XLVII.).—Consists of all the diocesan bishops. Coadjutors are required to attend, and may give opinion and advice, but may not vote if their diocesan is present. (Canon VII.) A majority of the bishops entitled to vote constitutes a quorum. Stated meetings annually. Special meetings

at instance of the primus or of the majority of the bishops. The meetings are open to the public, but there is power to exclude them on particular occasions. Judgments and deliverances must be pronounced in public. Decisions are those of the majority. The primus when present has a casting vote. In his absence the presiding bishop has no casting vote.

Stated Functions.

(*a*) Receives and finally determines all appeals against the resolutions and decisions of the bishops in their Diocesan Synods. (Canon XLVII.)

(*b*) Receives and finally decides upon all accusations against a bishop. (Canon LI.)

(*c*) Elects bishops on lapse, and is the confirming authority (this is a reality) on election by the diocesan electorate. (Canon V., and Form No. IV.)

(*d*) Has power to separate, sub-divide, and unite dioceses. (Canon IX.)

(*e*) Is the supreme and final court of the Church. (Canons XLVII. and LI.)

(*f*) Approves any alteration proposed in the constitution of the Representative Church Council. (See *infra.*)

3. *Provincial* (Canon XLVIII.).—Consists of—

(*a*) The First Chamber.—The members of the Episcopal Synod.

(*b*) The Second Chamber.—Presided over by a Prolocutor elected by it, and comprising—

(i.) The deans;

(ii.) The Pantonian professor of theology;

(iii.) The representative clergy of each diocese—one representative for every ten electors or fraction of ten; the electors being the presbyters entitled to vote in Diocesan Synod.

Either chamber may require a conference with the other. The prolocutor or vice-prolocutor has at all times free admission to the First Chamber where there is anything to communicate. Functions of this synod purely legislative. Convened at the instance of Episcopal Synod by mandate issued by primus. (Form XXIV.) Can alter, amend, and abrogate the canons in force, and enact new canons. The Code of Canons is binding on all members of the Church, and future alterations of or additions

to it become binding three months after enactment. No law or canon can be enacted, abrogated, or altered, but by a majority of each chamber. All changes and alterations in the canons must be notified in Diocesan Synod.

The Consultative Council on Church Legislation. (Canon xlix.)

This body, which was created by canon of the Provincial Synod in 1905, its constitution being at that time accepted by the Episcopal Synod, is composed of all the bishops, of elected presbyters and laymen in equal numbers; five of each order being elected, triennially, by the bishops, the others being elected, trienially, by the clergy and lay members respectively of the Diocesan Councils (the number of each order so elected being the same as the number of elected presbyters which the diocese is entitled to send to represent it in the Provincial Synod).

The Consultative Council on Church Legislation was the result of deliberations of a commission appointed by the bishops, and consisting of clerics and laymen (no bishops) to consider the so-called lay question. The commission held eight sittings in 1903-4, and brought out an elaborate report, now scarce.

In the Consultative Council all the members sit and deliberate together, unless a separate debate in the three orders is called for; and resolutions are passed (or negatived) by a majority of the members present; but a vote by orders may be called for on any question.

The Consultative Council has not only the right to express an opinion on any proposed legislation (even on its precise terms), it has also the right to consult on any subject seeming to need legislative action and to make a representation thereon to the Episcopal Synod, just as Diocesan Synods are empowered to do.

The Representative Church Council. (Canon l.)

Its formation resolved upon at a conference of clergy and laity, convened by the College of Bishops, in June, 1875. Its constitution formally accepted by that college on October 9, 1876. Recognised as the organ of the Church in matters of finance. It now holds and administers considerable sums for general Church purposes; the capital being vested in elected trustees.

It is composed of the bishops, all the clergy of the several dioceses, the lay members of the Diocesan Councils, and, in addition to them, five other lay representatives of each diocese chosen in Diocesan Council.

Every congregation is required to make a collection by means

of the offertory at least once a year in aid of the funds at the disposal of the Representative Church Council.

A clergy, widows and orphan fund was incorporated in 1903. It is distinct from the Representative Church Council, though the latter annually elects laymen to serve on its board of directors.

Two other bodies, the Walker Trustees and the Episcopal Trustees, also hold property in trust for the Episcopal Church.

The Diocesan Council.

Exists for financial and secular business. The bishop, the diocesan clergy, and the lay members of the Representative Church Council belonging to the diocese are *ex officio* members.

Diocesan Councils have power to add to their number other clerical and lay members of the Church in the diocese.

Congregational Committees.

In each congregation there is a finance committee, elected annually, to collect funds and remit them to the Representative Church Council, &c. (See *supra.*)

Appointment of Officers.

The Primus (Canon III.)—Chosen by the bishops out of their own number, irrespective of seniority or precedence.

Bishops (Canons IV. and VII.).—Elected, on issue of mandate of primus to dean (Form No. I.), by the clergy and laity of the vacant diocese entitled to vote, *i.e.*:—

(*a*) As to the clergy: Presbyters with cure residing in the diocese, and licensed presbyters who have officiated continuously in the Scottish Church for two years, and are licensed to a definite sphere of pastoral work in the diocese.

(*b*) As to the laity: One male elector for each congregation who must be an attested communicant not less than twenty-four years of age, elected by the adult communicants of both sexes whose names are on the communicants' roll of the congregation.

Nominations may be made by any elector present; but no nominee is elected unless a majority of votes, both of the clerical and of the lay electors present, is recorded in his favour. If no election is made within six months, the right of election *pro hac vice* lapses to the Episcopal Synod. The electors may by a

majority of votes in each order delegate the election to the Episcopal Synod if no election is made within three months from the date of the mandate.

The bishop-elect is then, on the election being confirmed, consecrated (if he be not already of the episcopal order) and collated. Previous to the confirmation of the elect, he promises obedience to the canons. (Form XIV.)

The primus acts as bishop *sede vacante*.

Coadjutor Bishops (Canon VII.).—Appointed in same way at the instance of the bishop of the diocese or of his Diocesan Council, the Episcopal Synod being the sole judge of the need for the appointment. The Episcopal Synod may *ex proprio motu* require the appointment. Have *jus successionis*.

Deans (Canon XXXIX.).—Are appointed by the bishop from among the incumbents in the diocese. Their position is akin to that of archdeacons in England.

Diocesan *chancellors*, *registrars*, *auditors* are appointed by the bishop. The synod *clerk* is appointed by the clergy. (Canons XLI.-XLIII.)

Incumbencies and Congregations.

(Canons XIII., XIV., XXXIII., and XXXV.)

Rights of patronage are recorded in the diocesan register. Disputed claims are determined by the bishop subject to an appeal to the Episcopal Synod. In most cases the patronage is in the vestry. The bishop institutes on presentation (Forms XV., XVI., and XVII.), and the presentee has to sign a declaration of assent to the Prayer Book and to the XXXIX. Articles, and promise due obedience to the canons of the Church (Forms XIII. and XIV.). Refusal to institute is subject-matter of appeal to Episcopal Synod. Assistant curates are presented by the incumbent or presbyter with cure and licensed (Form XIX.) by the bishop. New congregations are ordinarily formed at the outset as missions. Missions are of two classes:—

(A) *Independent Missions.*—These may be formed, with the bishop's sanction, if petitioned for by a sufficient number of persons living in a locality at an inconvenient distance from an existing church. If that distance exceeds eight miles, the bishop may grant the petition, and an appeal can be taken to the Episcopal Synod in the event of his refusal; but if the distance is less than eight miles from an existing church or churches, the bishop, before granting the petition, must give notice to the incumbents affected, and, if objection is made, the opinion of the Diocesan

Synod must be taken. Should the majority in the synod sustain the objection, and the bishop still desires to proceed, an appeal lies to the Episcopal Synod.

(B) *Dependent Missions.*—These may be formed within his own district by any priest having cure of souls. The bishop may, under stated conditions, take the initiative in forming a dependent mission into an independent one.

All incumbencies must, and independent measures may (and normally will), have a district assigned to them, for the spiritual care of which the priest is held responsible. A mission may apply to be raised to the status of an incumbency (or a new congregation to be created as an incumbency) only when a suitable church has been provided to the satisfaction of the bishop and a constitution for it has been sanctioned, and when in addition a certificate has been given by the Executive Committee of the Representative Church Council that the title-deeds of the property are in order, and that there is an adequate provision for the maintenance of the ministry. The bishop submits the application to his Diocesan Synod before giving his decision upon it. If his decision is at variance with the opinion of the majority in his synod, an appeal lies to the Episcopal Synod.

A roll of the communicants belonging to the congregation is kept (by the priest) in every incumbency and mission. (Canon XXXVI.)

The local registers belong to the congregation. They are kept by the clergyman, and must be inspected by the bishop or by the dean once in every three years. (Canon XXXVIII.)

Lay communicants vote on the appointment of—

(*a*) A lay elector to vote in the appointment of a bishop;

(*b*) A lay representative on the Representative Church Council and Diocesan Council;

(*c*) (In most cases) a vestry to manage the temporal affairs of the congregation, and to exercise its patronage.

(The vestry, if an incumbent becomes mentally or physically incapacitated, can, with the bishop's approval, and on procuring a medical certificate, procure a vacation of the charge. (Canon XIII.) Women have voting powers.)

Such as are licensed lay readers can read the Litany, and Morning and Evening Prayer, and preach in consecrated buildings. (Canon XX.)

Accusations, Judicial Proceedings, Sentences, and Appeals.

(Canon xli. Parts 1 and 2.)

Accusations.

Accusations are required to be made against a bishop to the Episcopal Synod; against priests and deacons to the diocesan bishop. The grounds are—

(*a*) Immorality, or unbecoming conduct or behaviour.

(*b*) Breach of canonical obligations.

(*c*) Grave neglect, habitual carelessness, or inefficiency in performance of official duties.

(*d*) Teaching or publication of doctrines or opinions subversive of the teaching of the Church as expressed in its formularies and in the XXXIX. Articles.

Accusations are only competent if made within two years; save that under (*a*) and (*b*) they may be made within five years with permission of the Court (*i.e.*, the Episcopal Synod or the bishop, as the case may be), or within six months after conviction in a civil court for an offence committed within five years. They must be made in writing. After an accusation has been lodged the accused person cannot free himself, by resignation of his office, from the jurisdiction of the ecclesiastical court save with its consent.

Accusations must proceed from three adult male communicants. In the case of a bishop one of these must be a clergyman; but the Episcopal Synod *ex proprio motu* may direct a person to bring an accusation against a bishop, as a bishop may also do against a clergyman of his diocese.

The accused may plead guilty at any time after accusation is lodged, and the case may then forthwith be disposed of; or he may transmit a written answer to the accusation.

The Court may authorise the accusation to proceed, or may refuse to entertain it as frivolous, or may direct inquiry to be made and then authorise proceedings; or may find on *primâ facie* grounds that it be dismissed; but the accusers may proceed if the Court does not disallow the accusation within three months.

Sentences.

Competent sentences are: (1) Censure; (2) suspension for a period not exceeding three years; (3) deprivation of office; degradation, or deposition from the ministry.

Appeals

There is an appeal on the part of both accuser and accused from the judgment and sentence of the diocesan bishop to the Episcopal Synod which must in the case of accusations against priests and deacons have the assistance of one or more legal assessors, and may have that of one or more clerical assessors. In all other appeals the Synod has discretion with regard to having the assistance of either class of assessors. In appeals not concerned with accusations, the Episcopal Synod may at its discretion, on the joint craving of parties, dispose of an appeal without an oral hearing. In cases of accusation the Appeal Court may sustain or dismiss the appeal in whole or in part, and may either diminish or increase the bishop's sentence. The Episcopal Synod may issue rules of procedure in connexion with proceedings under this canon. The expenses of the court are not awarded against parties; these expenses are to found by the Representative Church Council—so also the expenses of an official accuser so far as not awarded against or paid by the accused. Expenses between party and party are in the discretion of the court.

The quorum of the Episcopal Synod in accusations and in appeals is four. In the event of equal division of opinion the judgment appealed against stands, and in accusations against bishops the accused is acquitted. The primus has no casting vote, except in cases of dispute where the Episcopal Synod exercises original jurisdiction.

In all accusations and appeals the judgment of the Episcopal Synod is final.

Further provisions are made (Canon LII.) for dealing with differences and disputes.

Stated Relations to Church of England and other Branches of Anglican Communion, &c.

While this Church declares herself to be a branch of the One Holy Catholic and Apostolic Church of Christ, and as such inviolably retaining in the sacred ministry the three orders (bishops, presbyters, deacons) as of divine institution (Canon I.) she—

(*a*) Adopts the Ordinal (*mutatis mutandis*) set forth in the Common Prayer Book as now used in the Church of England. (Canon II.)

(*b*) Requires from its clergy subscription to the XXXIX. Articles (1562), and emphasises Article XXXIV. (Canon XII., Form No. XIII.)

(*c*) Recognises, as in full communion with herself, the Churches of England and Ireland, the Colonial and other branches of the same Churches, and the Protestant Episcopal Church in America, whose first bishop, Seabury, was consecrated at Aberdeen in 1784. (Canon XVI.)

(*d*) Authorises the Book of Common Prayer of the Church of England according to the Book annexed to the Act XIV., Carol. II., cap. 4, and the Scottish Liturgy according to the text adopted by the Episcopal Synod in 1910, for all purposes to which they are applicable: no clergyman being "at liberty to depart from them in 'public prayer and administration of the Sacraments,' or in the performance of the other services, except as specified in Appendix XXIX." (Form No. XXIX.) "or elsewhere in the Canons." A bishop may sanction translations of these service books in the Gaelic or other language for use in such places or on such occasions as he sees fit. Any congregation which had in use in 1910 the Scottish Communion Office according to an older text (no canonically *authorised* text existed before 1910) is permitted to retain the use of such earlier text *in its integrity*. (Canon XXI.)

The Appendix XXIX. above referred to contains a large number of permissible additions to, and deviations from, the English Book of Common Prayer, all of which are canonically sanctioned. They are embodied, along with the Scottish Liturgy (1910 text), in copies of the Prayer Book (Scotland) as printed under the *imprimatur* of the primus (Cambridge University Press).

(*e*) Specifies carefully (Canon XXIII.) the conditions relating to the introduction, either for sole or joint use (with the Prayer Book Office) of the Scottish Liturgy of 1910 in congregations of the Church. Both offices stand on an equal footing, and either one or the other may be used, at the discretion of the bishop (or the primus), at ordinations, at consecrations of bishops, and at meetings of all synods.

(*f*) Empowers the Episcopal Synod (Canon XXII.) to sanction another Lectionary than that (1871) in the Prayer Book; and a provisional print containing a revised arrangement for the use of the Psalter, and revised Tables of Lessons, is just about to be issued, but has not yet been formally sanctioned.

(*g*) Prescribes the use of the form of Catechism contained in the Common Prayer Book (Canon XXV.); any other catechism or other manual of instruction, in addition to the Church Catechism, can only be used if sanctioned by the bishop.

Miscellaneous.

In solemnizing holy matrimony the clergy are enjoined—

(1) To satisfy themselves that the requirements of the civil law of Scotland relating to proclamation of banns, &c., have been duly complied with; and, in the case of foreigners, that all preliminary conditions needed to constitute the marriage a valid one in their own countries have been fulfilled. The clergy are forbidden to perform the marriage service, or to permit it to be performed in their churches, for parties either of whom has a (civilly) divorced spouse alive, or for parties within the degrees forbidden by the ecclesiastical law of this Church. (Form No. xxviii.)

The bishop may sanction a service to meet the case of parties who have contracted a civil, or an irregular, marriage, and subsequently ask the benediction of the Church. (Canon xxvi.)

(2) As regards "vestures" and "ornaments," there are provisions (Canons xxx. and xxxi.) which exempt this Church from the difficulties incidental to the ornaments rubric in the English Book of Common Prayer.

(3) Bishops have limited *jus liturgicum*.

(4) Forms of *Si Quis*, Presentations, Institutions, Letters Testimonial, &c., are contained in the Appendix to the Canons.

THE CHURCH OF IRELAND.

General Legal Position as a Disestablished Church.

1. Her prelates, clergy, and laity are free from pre-existing laws prohibiting or restricting the right to hold assemblies, synods, and conventions of the Church, to elect representatives, and to frame constitutions and regulations for the government and management of the Church. (Irish Church Act, 1869, sec. 20.)

2. Her articles, doctrines, rites, rules, discipline, and ordinances as existing at the date of disestablishment are, subject to any modifications or alterations made by the Church herself after January 1, 1871, binding on the basis of contract on the members of the Church for the time being. (*Ibid.*)

3. The proprietary interests of the Church are, as regards their recognition by the temporal courts, on the footing of trust pro-

perty; and such of the official endowments as she has been allowed to retain have been vested in a legally constituted representative Church body. (*Ibid.*, secs. 20, 22, &c.) This body was incorporated by charter granted under letters patent.

4. The jurisdiction of all ecclesiastical courts has been abolished, and ecclesiastical law in Ireland has ceased to exist as part of the civil law. It remains binding (subject to alterations duly effected in General Synod) on the members of this Church by virtue of their quasi-contractual position as members of a voluntary religious body. (*Ibid.*, sec. 21.)

5. Her rights of appointment to offices in the Church are legally recognised; but not so as to create vested interests or freeholds. (*Ibid.*, sec. 66.)

6. The clergy are bound to make returns of marriages celebrated by them in accordance with the Marriage Act, 1844; and her churches and chapels are legally recognised as places for the celebration of marriages by the Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870. (*Regina* v. *Magee*, 1893, 32 Q. B. (Ireland), p. 87.)

7. Her archbishops and bishops have, in the eye of the law, precedence *inter se* according to seniority. (Royal Ordinance of March, 1885.)

8. Her general legal status is on all fours with that of the Roman Catholic Church in Ireland as expounded in 1873 in the case of *O'Keefe* v. *Cardinal Cullen*. (I. R., 7 C. L., 319.)

9. Although her tribunals are still called courts, they exercise consensual jurisdiction pure and simple. (*Long* v. *Bishop of Cape Town*; *Merriman* v. *Williams*.)

The Constitution.

This was settled at a General Convention of the "Archbishops and Bishops of this the Antient Catholic and Apostolic Church of Ireland, together with the Representatives of the Clergy and Laity of the same," held in Dublin in 1870. The laws regulating this constitution were last amended and consolidated in 1899. The preamble and declaration adopted by the General Convention in 1870 is referred to hereafter (p. 26). The constitution is set out in fourteen chapters, dealing with the General Synod, Diocesan Synods, Parishes and Parochial Organization, Appointment to Cures and Subscription, Non-Parochial Churches, Archbishops and Bishops, Cathedrals, Tribunals and Lay Discipline, Constitutions and Canons, The Representative Church Body, Special Funds, Burial Grounds, Glebes and Parochial Buildings, Widows and Orphans of Clergy.

The General Synod

Has the chief legislative power, and such administrative power as is necessary for the Church and consistent with her episcopal constitution. It is possessed of an official seal committed with the records to the charge of a record committee. It is convened and presided over by the primate, or in his absence the other archbishop, or failing both the senior bishop. Its supremacy is asserted in the 48th Canon of the Church.

Composition.

Sit together as a rule in full synod for deliberation and transaction of business.

(1) *House of Bishops.*—All the archbishops and bishops of the Church—5 constitute a House.

(2) *House of Representatives* :—

(*a*) The Clerical Order: 208 clerical representatives (priests) elected by clergy.

(*b*) The Lay Order: 416 lay representatives. Those who solemnly declare themselves communicants of full age, but including clergy without cure who own property in the diocese represented.

(*a*) and (*b*) are distributed as between the dioceses according to a tabular arrangement, and sit for three years.

The lay representatives are elected by the diocesan synodsmen.

Synod meets under archiepiscopal mandate annually. Special meetings at discretion of the primate, or on written application of not less than one-third of any one order (bishops, clergy, laity).

Quorum for full synod—3 bishops, and 40 clerical and 80 lay representatives.

Interim vacancies are filled up under diocesan precepts.*

* N.B.—"1. The proposal in 1869 for the inclusion of the laity in the synod appears to have originated in the Lower House. An amendment reserving questions of doctrine and discipline for the clergy alone was rejected by the Lower House.

2. The laity decided the system of their representation. Parochial delegates were elected at a meeting of church parishioners. The delegates in turn elected representatives to the lay conference, which was thus composed of 417 representatives. The appointed chairman of the conference was the Archbishop of Armagh. It was on resolutions of the lay conference, concurred in by the two archbishops (Beresford and Trench), that the structure of the general convention of 1870 was founded.

The clergy accepted the double proportion in favour of the laity (based in great measure on the apprehension that laity would never assemble in such full numbers as clergy) as inevitably drawing with it the vote by orders.

3. The Committee of Organisation appointed to prepare the draft constitution

Functions in Detail.

1. To make, alter, and amend statutes and canons which are introduced as Bills, and are read three times.

2. To modify or alter articles, doctrines, rites, rubrics, and formularies by Bills based on preliminary resolutions, such Bills and resolutions having been passed by a two-thirds majority of each order.

3. To regulate mode and instrument of exercise of patronage.

4. To control, alter, repeal, or supersede any act of a Diocesan Synod involving any principle inexpedient as regards the common interests of the Church.

5. To alter, with the concurrence of Diocesan Synod, the territorial arrangements (provinces, dioceses, parishes, or districts).

6. To vary or annul an act or proceeding of a Diocesan Synod; overrule an episcopal veto or a proposal in Diocesan Synod in certain events.*

7. To hear appeals from an episcopal refusal to institute to a parochial benefice.

8. Generally to make all such regulations as shall be necessary for the order, good government, and efficiency of the Church.

9. To order and control the representative Church body. (See *infra.*)

Regulations of Particular Import.

(A) Bishops vote separately after the declaration of the votes of the representatives, and debate separately if they so desire.

(B) A proposal requires for its adoption a vote in its favour of

—bishops, with clergy and laity in equal numbers—worked by the light of the constitutions of the Colonial Churches.

4. Notwithstanding the preponderance of lay representation, the Irish priesthood considers that in few ecclesiastical assemblies has their order been better able to stand up for itself.

5. In the country parishes the nomination system as regards the incumbent has not always proved satisfactory. Parochial nominators have insisted on the appointment of the parish favourite. As regards small parishes they are best grouped under an experienced priest provided with a staff of curates.

6. No comparatively sinecure positions for the literary ; but the literary output of Scotland, where no such posts exist, may well put England, let alone Ireland, to the blush. Irish bishoprics so arranged as not to involve overwhelming work. "We could have a Dr. Creighton as bishop there without submitting to see the history of the papacy a fragment.'"—(Dr. Travers Smith (Canon of St. Patrick's), *Church Reform.*)

* Thus if the bishop dissents from an act twice affirmed by a two-thirds majority of both orders in synod, General Synod decides the issue.

a majority of the bishops if they vote, and of a majority of the representatives voting conjointly, or of a majority of each order if they decide to vote by orders.*

(C) If a question rejected by the bishops be reaffirmed by not less than two-thirds of the members of the clerical and lay representatives voting conjointly or by orders at the next annual session, it is to be declared carried unless negatived by at least two-thirds of the entire order of bishops present, and voting and giving their reasons in writing.

(D) House of Bishops elects primate of all Ireland from among themselves, including (in most cases) a bishop-elect chosen by the Diocesan Synod of Armagh, who if not elected primate has *jus successionis* to the vacant diocese.

(E) Changes in formularies or laws must of necessity be put to the orders separately, and cannot be carried except by majorities of two-thirds of both orders in two successive years.

(F) No Diocesan Synods, and still less select vestries, have any cognizance of doctrine or ritual.

Diocesan Synod.

Any diocese may unite for synodal purposes with another or others under the same bishop.

Any diocese may also divide itself into districts and hold its Diocesan Synod in two parts.

The Diocesan Synod meets annually, the bishop or his commissary presiding. Special meetings can be convened by the bishop or on the written requisition of half the members of the Diocesan Council, or one-third of the members of either order of Diocesan Synod.

Composition.

1. The bishop.

2. The beneficed and licensed clergy of the diocese (including in the case of the Dublin Diocesan Synod the provost and fellows of Trinity College and professors in the University of Dublin who are in priests' orders):

3. Lay synodsmen (being communicants of full age whose qualification is ascertained by personal declaration)—

(*a*) as regards parochial and district parochial churches and other churches and chapels in which there is a register of duly qualified vestrymen, two for each officiating clergyman. (This is subject to variation);

* They vote by orders at the instance of ten members of either order.

(*b*) as regards diocesan cathedral church, two for each of the clergy exclusively serving that church;

(*c*) as regards other clergy licensed to officiate or preach in the diocese and qualified to sit in Diocesan Synod, two for each of such clergy.

Synodsmen sit for three years. Representatives of parishes in default may be barred. One-fourth constitutes a quorum. (Subject to variation.)

The component elements sit and debate together. They also vote together and not by orders, unless six members of either order require the votes to be taken by orders.

Functions in detail.—

1. Elects bishop on issue of metropolitan's mandate. A select list of not more than three persons is formed. If on further voting any one of these receives two-thirds of the votes of each order he is elected. Failing this, the two candidates who receive a majority of the votes of the several orders are nominated to the House of Bishops, which elects one of them. In the alternative, the orders not acting with effect, the House of Bishops, on reference to it, makes the appointment.

2. Passes synodal acts subject to the assent of the president. These require a majority of clergy and synodsmen present and voting conjointly, or a majority of the members of each order present and voting by orders. Acts bind not only the synod, but also all other members of the Church in the diocese.

If after the bishop's dissent to a proposed act it be reaffirmed at the next annual meeting by two-thirds of each of the orders present and voting, it is finally submitted, should the bishop still dissent, to the General Synod. If a majority of each order only is obtained, the bishop may move to refer the matter to the General Synod.

3. Can exercise all powers and make all regulations (consistently with the trusts and the general law of the Church) as to the temporalities which may be necessary for the welfare of the Church in the diocese, but a person aggrieved by an act relating to property may appeal to the General Synod for a final decision.

4. Can, with the consent of the representative body, unite, divide, and rearrange the boundaries of benefices subject as regards the interests of the sitting incumbents to their consent.

5. Can refuse admission to synod of representatives of a parish in default as regards its obligations to the diocese.

6. Triennially appoints a patronage board or committee of two

clerical members and one layman to act with the bishop. This board, on a vacancy, acts in conjunction with three representatives of the parish concerned. At such combined meeting the bishop, if he attends, has a casting vote. On refusal of nominee by the bishop, an appeal lies to the General Synod.

7. Regulates the registration and revision of lists and mode of election of parochial vestrymen. Defines, where requisite, the powers and duties of vestry, select vestry, and wardens.

8. Appoints the

Diocesan Council

Annually from its own members, consisting of the bishop, and such number of clergy and laity as it likes, to perform delegated functions. It is the body which determines questions relating to the registration of vestrymen.

Parishes.

Parochial Organisation.

A parish includes every church or chapel with a beneficed or licensed clergyman, and a register of duly qualified vestrymen. The churchwardens are appointed, the one by the incumbent, and the other by the registered vestrymen at the Easter Vestry.

Every *male* of full age who declares himself a member of the Church and

(*a*) an owner of local property of the clear annual value of £10, or

(*b*) a resident and not registered elsewhere, or

(*c*) to have been for three months last past and to be still an accustomed member of the congregation and not registered elsewhere

is entitled to be a registered vestryman.

Every vestryman registered as an owner of property and contributor to the parochial church funds of a specified sum may vote at any election of synodsmen and select vestrymen. The register of vestrymen is revised annually—a select vestry consisting of the clergy, the wardens, and not more than twelve vestrymen annually appointed performs the routine business of the parish. It has charge of all parochial, charity, and church funds, and thereout provides for all the requisites for Divine Service, keeps the church and parish buildings in repair, and appoints and controls the parish officers and servants. No change may be

made in the structure, ornaments, and monuments of the church without the consent of the select vestry as well as the incumbent, or without the bishop's subsequent approval; but a person aggrieved can appeal to the court.

The registered vestrymen triennially elect the three nominators for the parish to act on the vacation of the cure. (See *supra.*) They also elect their representatives for the Diocesan Synod.

A right of presentation may be vested by the Diocesan Board in a benefactor subject to the approval of the Representative Body, the bishop, the Diocesan Council, and the vestry concerned; but such right is to be deemed a discretionary trust for the benefit of the church, and cannot be assigned or delegated to another. A clergyman once admitted to a cure cannot be removed without his consent unless upon the decision of the General Synod. A curate assistant is removable without his consent only by decision of the bishop or on the avoidance of the benefice. All persons before admission to orders or curacies or cures must (*inter alia*) declare their subscription to the declaration prefaced to the statutes of the Church, to the XXXIX. Articles in the Book of Common Prayer and Ordinals, and promise canonical obedience to the ordinary and submission to the authority of the Church and the laws and tribunals thereof.

Cathedrals.

The bishop of the diocese is the ordinary of the cathedral church, and as a rule appoints the dean, dignitaries, prebendaries, and canons, also the archdeacon.

The Diocesan Synod, with the consent of the General Synod, can make changes in the constitution of the chapter.

The conduct of the services is regulated by the dean and chapter with the consent of the bishop.

Tribunals.

1. The Diocesan Court tries offences not involving any question of doctrine or ritual. The ordinary or his commissary is judge, with his chancellor acting as assessor. The clerical members of the Diocesan Synod quinquennially elect three clergy, and the lay members at the same time elect three laymen as members of this court, and one of each of these is summoned by rotation to the hearing as judges of fact. The ordinary or his commissary can, with the consent of both sides, hear and determine the case alone. If the ordinary himself institutes proceedings in his own court, the chancellor tries the case. In other cases, too, the bishop may direct his chancellor to act in his place. Charges against a clergyman can at the outset be referred by the bishop to a

commission of inquiry consisting of one or more clerical and one or more lay nominees.

2. The court of the General Synod may be the tribunal of first instance by remission of a case from the Diocesan Court. It is the sole tribunal in matters of doctrine or ritual. It is also the court of final appeal from every judgment and sentence of the Diocesan Court. It can on terms grant a rehearing before it of any cause which it has previously (within the preceding year) decided.

It consists of—

(*a*) The three members of the House of Bishops first in order of precedence who are able to attend;

(*b*) Four lay persons from a list of ten members of the Church elected in General Synod and of high legal standing.

(In cases where the Representative Church Body is a party the lay element is differently constituted.)

A charge involving a question of doctrine or ritual if not promoted by the ordinary must be preferred by at least four male communicants of full age (in cases against an archbishop or bishop, six) who signify their submission to the authority of the General Synod. Such a charge can also at the outset be referred by the archbishop of the province to a commission of inquiry consisting of one or more clerical and one or more lay nominees.

The court may not try any matter or question which in the opinion of the lay judges is one for a civil tribunal.

The decision of the majority is the decision of the court, but in questions of doctrine or deposition from Holy Orders the concurrence of two of the ecclesiastical judges is required for an adverse judgment, and the sentence is pronounced by one of them.

This court can also determine questions of a legal nature referred to it by the House of Bishops or the General Synod and arising in the course of their proceedings.

Every act which would have been a breach of ecclesiastical law in the days of the establishment is a breach of the ecclesiastical law of this Church for the time being, and all crimes punishable by law in Ireland, and all breaches of the canon law of this Church, and the teaching of doctrine contrary to that of the Church of Ireland, are offences cognisable by these tribunals, and similar punishments apply as before.

Representative Church Body.

This statutory body is composed of the archbishops and bishops *ex officio*, one clerical and two lay members elected for each diocese from among those qualified for the General Synod; other co-opted members equal to the number of dioceses for the time being and

similarly qualified. One-third both of the elected and co-opted members retire annually by rotation of dioceses. Its function is to hold and invest all property for such purposes as the General Synod directs or appoints. It has powers of sale and letting, and regularly reports to the General Synod.

Superannuation Funds.

Full provisions for retiring annuities in the case of archbishops and bishops are contained in the Constitution of 1870 (cap. vi.)

A clergy superannuation general fund was provided for by a General Synodal Act of 1905.

Stated Relations to the Church of England and other Branches of the Anglican Communion.

1. The Church in the preamble and declaration of its constitution declares that as the ancient Catholic and Apostolic Church of Ireland—

(*a*) It continues to profess the faith of Christ as professed by the primitive Church; that it will maintain inviolate the three orders in the sacred ministry; that it is a Reformed and Protestant Church; that it receives and approves the XXXIX. Articles as adopted in the Dublin Synod of 1634 and the Book of Common Prayer according to the use of the Church of Ireland, and the Ordinal as adopted in the Dublin Synod of 1662.

(*b*) It will maintain communion with the sister Church of England and with all other Christian Churches agreeing in the principles of the declaration above referred to; and will set forward, as far as in it lies, quietness, peace, and love among all Christian people.

2. The constitutions and canons (54 in number), embodied in the constitution, provide for the exclusive use of the forms of liturgy and ordinal prescribed by the Church of Ireland; the ornaments of the bishops are to be the customary ecclesiastical apparel of their order, and the lower clergy are confined to the plain white surplice with bands and scarf of plain black silk and hood, and are allowed to wear a plain black gown in preaching; the eastward position at the consecration in Holy Communion is not admitted; genuflexions and sacring bell are forbidden; and ceremonies not expressly prescribed in the Common Prayer Book may be prohibited by the ordinary.

3. The 30th English Canon as to the use of the Cross in baptism is by the express direction of the General Synod inserted in full.

THE CHURCH OF ENGLAND IN THE WEST INDIES.

Before 1824 an episcopal jurisdiction of sorts was in the Bishop of London. There were parishes and vestries in Jamaica constituted for civil and ecclesiastical purposes, and there were commissaries in Bardados, Jamaica, and Antigua. The "ordinary" for each colony was the Governor acting in the name of the Crown. The clergy were appointed by the Governor and held office at his pleasure, and there was no corporate life among them. Some were respectable, others were anything but. The clergy were maintained by State provision, and had to submit to a deduction from their stipends by way of provision for pensions and for their widows and orphans.

In 1824 the Crown created by letters patent the two Sees of Jamaica (for Jamaica, the Bahamas and Honduras) and Barbados (for Barbados, St. Vincent, Grenada, Antigua, the other Leewards, Trinidad, and Guiana), and provision was made out of the Consolidated Fund for the salaries of bishops, archdeacons, and auxiliary curates and catechists. The Church here became part of the United Church of England and Ireland. (6 Geo. IV., c. 88, and 7 Geo. IV., c. 4.) Rural deans appear on the scene in 1828.

In 1842 the Crown was empowered by an Imperial Act (5 & 6 Vict., c. 4) to create by letters patent three new dioceses, to revoke the existing letters patent, and to apportion the existing Parliamentary grants (some £20,000 per annum) in view of the new creations. Thus were created the Sees of Antigua and Guiana, where there was concurrent establishment as well as endowment of the Presbyterian and Dutch Reformed Churches. In nearly all the colonies above named there was concurrent endowment. In 1861 the Crown was further empowered by a Colonial Act (24 Vict., c. 19) to create the See of Nassau for the Bahamas and by way of severance from that of Jamaica.

Meanwhile the clergy reserves of Canada had been withdrawn and handed over to the Canadian Legislatures (1853). (See *infra.*)

Afterwards the creation of sees by the issue of letters patent in respect of self-governing colonies was discontinued (1866-7). (See *infra.*)

In 1868 the payment of official salaries out of the Consolidated Fund was stopped (West Indies (Salaries) Act, 1868, prompted by the Irish Church Bill), and the Governor of Jamaica formally notified the bishop that the Clergy Act would not be renewed (7th Dec., 1869).

The Established Church of England was found to be in a minority taking the West Indies as a whole.

As far as the mother country was concerned the connexion between Church and State ceased to be maintained.

In Jamaica the members of the Church, including all baptized laymen of full age who signed a declaration of willingness to contribute to the support and maintenance of the Church, and of claim to the right of voting as members of their congregation for the election of a lay representative to the first synod, were authorised to assemble in the first Diocesan Synod to be called by the bishop, the synod to be self-governing and capable of holding property. (Law xxx., of 1870.)

The See of Trinidad was created in 1872-3, and its bishop was incorporated with others (1873, Ordinance 8). The See of the Windward Islands, now held by the Bishop of Barbados, was created in 1879. British Honduras obtained a separate bishop in 1891 for the see which was created in 1883.

In Jamaica, Guiana, Honduras, Nassau, Antigua, and the Windward Islands there have been Local Disestablishment Acts.

Barbados was against disestablishment in 1870, and re-established the Church in 1872. Its constitution is set out in the Anglican Church (Barbados) Act, 1911. The Acts provide for the selection of the bishop by the Archbishop of Canterbury, the Bishop of London, and another bishop of the Province of Canterbury on the application of the Speaker of the House of Assembly, the President of the Council, and the Dean and Chapter, and makes provision for the salaries of bishop and clergy, the incorporation of Dean and Chapter, and of the Diocesan Synod, appeals to Archbishop of Canterbury, and appointment of rectors and curates.

In 1873 the need for a provincial union of the dioceses of the West Indies was formally expressed at a conference of the bishops held in Demerara, and this step was also recommended at the Lambeth Conference, 1878. The several Diocesan Synods or Church Councils signified their consent. The Archbishop of Canterbury in 1880 added his, all the bishops taking the oath of canonical obedience to him. The constitution (16 Articles and 9 Canons) was adopted in 1883, modified in 1887, amended in 1888, and reamended in 1897.

The Church of England in the West Indies is described in the Canons as a disestablished Colonial Church.

The Provincial Synod

Consists of the bishops alone (because, as explained in the constitution, the distance of the dioceses from each other prevents the regular gathering together to one place of a really and sufficiently representative body of clergy and laity). They choose the primate of the province (by a two-thirds majority), who thereby becomes Archbishop of the West Indies. He presides. In his absence the senior bishop in point of consecration

presides. It meets triennially on at least six weeks' notice, and specially on summons by the primate. Canons require the assent of two-thirds of the bishops present, and resolutions require that of a majority of them. The bishops of the province have a qualified right to legalise adaptations and abridgments of and additions to the services of the Church.

Representative Provincial Synod.

When more than half of all the Diocesan Synods containing together two-thirds of the clergy of the province report that they are prepared to elect and send to Provincial Synod with the bishop one representative clergyman to every ten in the diocese (or at least six in all) and an equal number of laymen, then the synod assembles as a Representative Provincial Synod. Deliberations may then be conducted in separate assemblies or in one, but voting must be by orders, and there must be a majority of two-thirds of each order for the passage of a canon, and a bare majority of each order for the passage of a resolution.

No question affecting the general administration of the affairs of the province can be discussed by Representative Provincial Synod unless in the opinion of the primate and of a majority of the members of each of the three orders it be determined to be within its competence and desirable for it to deal therewith.

Its primary functions are declared to be legislative.

Diocesan Synods.

The constitution of the Jamaican Synod is typical of the rest. The synod elects the bishop subject to confirmation in Provincial Synod. Opposition to a bishop-elect on the part of a substantial minority (not less than one-third of the members present and voting) has to be communicated to Provincial Synod. All the clergy holding the bishop's licence are included as constituent members, and all are expected to attend. The lay representatives must be communicants of six months' standing elected annually by the "settled congregations." Fifty registered communicants form a minimum congregation for this purpose; smaller congregations may combine. If a congregation exceeds 200 registered communicants it may have two representatives. Voters must be baptized members of the Church, registered as subscribing supporters, and not be on the roll of any other religious body. The proposal to confine elective power to communicants has revealed an even balance of opinion among both clergy and laity. The bishop has been against the proposal on two occasions. In spiritual matters voting is by orders. In financial and secular matters members vote *en masse*.

There is an incorporated body of trustees for holding property (four laymen). There is also a standing committee of advice (Diocesan Council) composed of bishop, assistant bishop, archdeacons, commisaries, twelve clergy, and twelve laity. (In Antigua two clergy and five laity; in the Windward Islands two clerical and two lay representatives of each archdeaconry.) There is also a Diocesan Financial Board (bishop, assistant bishop, archdeacons, commissaries, the four lay trustees, three clergy, and nine other laity, of which a layman must be chairman. A clergyman can be superannuated at any age by bishop, Diocesan Council, and Financial Board acting together.

If the bishop dissents from the decision of two-thirds of the other orders voting separately or together touching a proposed canon or resolution relating to doctrine, discipline, ritual, or the constitution of the Church, the matter is on request of the majority referred to the bishops of the province. If they concur with the bishop there is an end of the matter; but if they concur with the majority, then the matter is referred to the English Committee of Reference, whose decision is final.

A canon passed in Diocesan Synod which in the judgment of the Diocesan or Provincial Synod alters or modifies an article or rubric of the Church of England is of no effect unless, in addition to confirmation in Provincial Synod, it is also confirmed by the English Committee of Reference. A similar canon passed in Provincial Synod, if assented to in Diocesan Synod, is submitted for confirmation by the English Committee of Reference. Subject as aforesaid, canons requiring consent of Provincial Synod, may, with the consent of all the bishops, be provisionally acted upon pending the assembling of the Provincial Synod, as also may canons sent down for approval of the Diocesan Synod and amended there.

Canons of the Provincial Synod affecting matters not by law or usage placed within the sole authority of the bishops are operative only in those dioceses which accept them.

In Guiana the synod is incorporated, and provision is made for election of bishop by a synodal constitution scheduled to State Ordinance (No. 2 of 1873). In Honduras the local synod was empowered to act by local legislature, but in fact the choice is delegated to the primate with the advice of the Archbishop of Canterbury and others.

Parochial Machinery.

There are Parochial (Ruri-decanal) Councils which, besides the clergy, comprise a lay representative from each "settled" congregation, which in turn has its church committee or vestry, consisting of ten to fourteen members elected by the registered members of the congregation from a list presented by the incumbent. The vestry, on a vacancy in the cure, selects three clergy,

from whom the bishop appoints the one whom the vestry desire; but if the bishop considers that none are suitable, the appointment is made in Diocesan Synod. (In Antigua the vestry nominates a candidate and goes on nominating until the bishop accepts. If no appointment is agreed on within four months there is lapse to the bishop.) The registered members of the congregation are registered as contributing members. Thus, in the Diocese of the Windwards they pledge themselves to a minimum church rate of sixpence per month in consideration of church rights, privileges, and ministrations. The constitutions of the Diocese of Antigua provide that no one neglecting to support the clergy and ministrations of religion is to have the right thereto; also that the rectors and church officers' stipends are a first lien on parochial funds, and subject thereto 1*s.* 10*d.* is to go to the diocesan fund.

Removal of Incumbents (not Criminous).

This can be effected on motion of archdeacon, bishop's commissary, or not less than half the registered communicants of the church, on four grounds:—

(*a*) Want of harmony between the clergyman and his congregation, causing dissatisfaction in the district;

(*b*) Serious failure of church funds;

(*c*) Diminution of congregation, and especially of communicants;

(*d*) Absence of sufficient reason for expecting a satisfactory change in these respects while the clergyman remains in the cure.

Report by a commission to the Diocesan Council, and if Diocesan Council are for removal, the bishop removes without appeal. If congregation is wholly wrong, the bishop admonishes them; otherwise the bishop in the Diocesan Council adjusts the matter as circumstances require.

In the Windward Islands the provisions under this head are especially elaborate; and the bishop here, being declared to be in charge of souls of the entire diocese, can move in the matter *mero motu*.

Other Special Points in the Canons.

1. An election of a bishop in Diocesan Synod is subject to confirmation by a majority of the bishops of the province.

Failing satisfactory action in Diocesan Synod, the English Committee of Reference is asked by the primate to make the selection, which likewise has to be confirmed.

2. Election and appointment may also be directly delegated by the Diocesan Synod, but in any case the confirmation of the con-provincial bishops is required. Where a diocese fails to elect or delegate the election within six months of the occurrence of a vacancy, then the appointment lapses to the con-provincial bishops.

3. Unless there be in a diocesan or missionary jurisdiction eight presbyters in charge of separate permanent cures so far organised as to be entitled to send one lay representative to the Diocesan Synod or Church Council, the bishop is appointed by a majority of the bishops of the province, but representations of the wishes (if any) of the local clergy and laity are to be laid before them.

4. Provision is made for the appointment of coadjutor or assistant bishops * with or without *jus successionis*.

5. Every diocesan bishop must take the oath of due "honour and deference" to the Archbishop of Canterbury, and also declare his submission to the lawful authority of the Provincial Synod and the primate of the province.

6. A new diocese can be formed with the concurrence of the diocesan bishop or bishops, and synod or synods affected, and of the primate. A missionary jurisdiction may be created by the bishops of the province. An adjacent diocese may be incorporated with the province with the concurrence of a majority of the Diocesan Synods and with that of the Provincial Synod. The boundaries of dioceses can be altered, and dioceses can be re-arranged by the Provincial Synod on conditions specified.

7. The Provincial Synod has admitted the adoption by Diocesan Synods of shortened forms of services which are legal in England.†

The Courts.

Judicial questions affecting the status and rights of the laity, or the morals, ritual, doctrine, and legal rights of the clergy, are for the courts alone.

The Provincial Court of Appeal. (Canon I.)

Consists of the primate and the two senior bishops available, assisted by experts in ecclesiastical law when necessary. There is no appeal from a diocesan court on a question of immorality.

* The coadjutor has the *jus*, the assistant has not.

† Each diocese is a separate unit of the Church of England. Thus it is the Church of England in Jamaica, the Church of England in British Guiana, the Church of England in the Diocese of Antigua (and the same as regards the Windwards and Nassau).

The Diocesan Courts

Are the courts of the bishop, and are otherwise constituted under diocesan arrangements. Charges against the bishop himself, which may be for immorality, crime, conduct unbecoming the character of a bishop, gross or habitual neglect of duty, deliberate refusal to obey the lawful authority of the primate or the Provincial Synod, heresy, are, under diocesan arrangement, first received and then investigated and reported on by a commission on the demand of not less than five presbyters. The commission must consist of five (Jamaica, Canon XXXVI.) presbyters of six years' standing, and a legal assessor. In default of the five presbyters, the primate can direct a commission of inquiry to issue, at the instance of not less than five clergy and lay communicants (of whom two must be clergy). If there are no diocesan arrangements in this connexion, the primate has to issue a commission of his own constitution.

In all cases the trial itself and the determination of the sentence (if any) is by con-provincial bishops (three, including the primate, being a quorum).

ENGLISH COMMITTEE OF REFERENCE. (Canon II.)

This is constituted primarily of the two Archbishops and the Bishop of London (Archbishop of Canterbury having a casting vote), with power to determine all matters of reference and appeal brought under the constitution for its final judgment and determination. In doctrinal and ritual questions each prelate may appoint a legal assessor.

THE CHURCH OF ENGLAND IN THE DOMINION OF CANADA.

For nearly half a century (1749-1787) this Church was under the jurisdiction of the Bishop of London.

At one time it was in part established and endowed. An Act of 1758 established it in Nova Scotia, the original diocese. It was not directly established though favoured in New Brunswick.

In 1791 the Crown was empowered (31 Geo. III., c. 31) to authorise the Colonial Governor to make allotments (reserves) of land for the support of a Protestant clergy in each province (secs. 36 and 37), and with the advice of the Executive Councils to erect and endow within each township or parish one or more parsonages or rectories (sec. 38), and to appoint incumbents

(sec. 39) subject to the legal jurisdiction of the bishop, &c., "according to the laws and canons of the Church of England" (sec. 40). The Colonial Parliament, however, was authorised to vary or repeal these provisions (sec. 41).

Moreover, the university (since thrown open) was then confined to members of the Anglican Church, and the Bishop of Nova Scotia (the first Colonial bishop appointed under letters patent) had a seat in the Legislative Council and Assembly.

In 1840 the judges advised the House of Lords that the term "Protestant clergy" was not confined to clergy of the Church of England, and an Imperial Act (3 and 4 Vict., c. 78) provided for the sale and distribution of the clergy reserves.

The statutory right of endowment conferred on the Governor in 1791 was taken away by a Colonial Act of 1852 (14 and 15 Vict., c. 175); thenceforth no new rectories could be erected out of the clergy reserves or the public domain. Then came another Act of 1853 (16 and 17 Vict., c. 21), which enabled the Colonial Legislature to alter the appropriation of the clergy reserves and the proceeds of their sale. This was effected by a Colonial Act of 1855 (18 Vict., c. 2) in order "remove all semblance of connexion between Church and State in Canada" (Alpheus Todd, p. 306). Meanwhile Bishop Fulford, in his charge to the clergy (1852), had declared that the Church in Canada was spiritually at one with the Church of England, but legally and politically distinct. This position was emphasised by the Toronto Synod of 1854. There still remain some rectories carved out of the clergy reserves before secularisation, lingering remains of departed privilege.

In 1856 a Colonial Act (19 and 20 Vict., c. 121) authorised the making of constitutions and regulations in Provincial and Diocesan Synod. This Act was further amended and explained in 1859 (22 Vict., c. 139).

A metropolitan was appointed by letters patent (1860 and 1862) with powers outside the scope of the Acts of 1856 and 1859, which he was duly informed that he must not exercise. The first metropolitan in Canada was Bishop Fulford of Montreal.

After its emancipation had become fully secured, the Church was able to frame a constitution and canons for its order and good government and the management of its property and affairs; some account of which is given below.

The General Synod.

(First assembly, 1893; most recent assembly, 1911.)

Composition.

(1) *The Upper House.*—The bishops of the Church of England in the Dominion of Canada.

(2) *The Lower House.*—Clergy and laity (delegates of Diocesan Synods or Dioceses), presided over by a prolocutor elected by them.

When both Houses sit together each votes separately. The two sit separately except by consent of both. Each House holds its sittings in public or in private at its own discretion.

The delegates vote by orders if required and in some events by dioceses.

In the case of dioceses without synod, bishop appoints delegates.

Dioceses having less than 25 licensed clergy have 1 delegate from each order.

Dioceses having 25 to 50 licensed clergy have 2 delegates from each order.

Dioceses having 50 to 100 licensed clergy have 3 delegates from each order.

Dioceses having 100 and over licensed clergy have 4 delegates from each order.

The General Synod may change from time to time the number and proportion of Diocesan representatives.

In some cases non-resident delegates are allowed.

The Diocese of Newfoundland may by resolution be admitted to membership of General Synod on application of its synod.

Synod meets triennially or oftener at discretion of primate or on the requisition of any five bishops.

Quorum: A majority of the bishops and a majority of each order of delegates.

President: Is elected by the bishops from among the metropolitans, or bishops of the dioceses not in an ecclesiastical province, for life or until he resigns or ceases to be a bishop within the area of the General Synod. On election he becomes Primate of all Canada and archbishop of the see over which he presides. The Archbishop of Rupertsland is the present Primate of all Canada.

The relation of the two Houses and the procedure is based on Parliamentary precedents.

Powers and Functions.

To deal with all matters affecting in any way the general interests and well-being of the Church, and in particular—

(1) Matters of doctrine, worship, and discipline.* (Canons

* Marriages within prohibited degrees are forbidden (G. S., Canon III.). The marriage of a divorced person to any other man or woman, as the case may be, while the former husband or wife is alive may not be solemnized. (G. S., Canon V.)

on these must be passed at two successive meetings of the General Synod.)

(2) The general missionary and educational work of the church, and general agencies in church work.

(3) Regulations affecting the transfer of the clergy from one diocese to another. (G. S., Canon VI.)

(4) Education and training of candidates for Holy Orders.

(5) Constitution and powers of an appellate tribunal which is so far confined to matters of doctrine or worship; or to review any adverse judgment against a bishop; or by request to determine questions relating to the construction or authority of a canon, and any question of ecclesiastical law submitted to it.

(6) The erection, division, and rearrangement of provinces with the consent of such as are affected.

Further Points in relation to General Synod.

1. Canons or resolutions of a coercive character, or involving penalties or disabilities, must first be accepted in Provincial Synod or synod of independent diocese before they can operate there. The General Synod, in the statement of fundamental principles, disclaims interference with any rights, powers, or jurisdiction of any Diocesan Synod within its own territorial limits as at the date of its constitution held or exercised by such Diocesan Synod. It also declares that the constitution of the General Synod involves no change in the existing system of Provincial Synods.

2. A change in the basis of the constitution requires the presence of a majority of each order and the passage either unanimously by each House or a two-thirds majority of the Upper House, or a two-thirds majority of each order in the Lower, confirmed in the latter case by the same majority in the next session.

3. Clergy and laity vote by orders if required. If a proposition be decided in the affirmative, any six delegates (two from each of three different dioceses) may demand a vote by dioceses.

4. The expenses of the synod, including the necessary travelling expenses of the members, are provided for by an assessment of the several dioceses.

5. Provision is made for the constitution of the Missionary Society of the Church of England in Canada, under the charge of a board of missions, which, under and subject to Canon IX. (G. S.), is empowered to establish missionary dioceses. This society (the constitution and functions of which are largely based on the models of similar societies in the United States of America) is a very

important institution, and fills a large place in the life of the Church in Canada. It consists of all the members of that Church; and every parish and mission district in it are brought into close contact with the work of the society. There is a Woman's Auxiliary, which has branches in every diocese and in almost every parochial unit.

6. Provision is also made for the establishment of the Sunday School Commission of the Church for the study of the problems of religious instruction and Church training in connexion with the Sunday Schools, and for the adoption of measures for the promotion of their efficiency and for the advancement of the cause of religious education. (G. S., Canon VII.)

7. The General Synod is to be incorporated with power to acquire, hold, and dispose of property, real and personal, for the purposes of the Church.

8. The title "The Church of England in Canada" has been formally challenged in synod.

The Provincial Synods.

1. *Canada.*—Dioceses of Nova Scotia, 1787; Quebec, 1793; Fredericton, 1845; Montreal, 1850.

Composition.

(1) *Upper House.* — Bishops of the province (diocesan, assistant, missionary).

(2) *Lower House.*—Clerical and lay delegates. Twelve of each order from each diocese.

Meets triennially or oftener at the discretion of the metropolitan, or on requisition as in the case of the General Synod. (See *infra.*)

The metropolitan has precedence of all the other bishops, and they are his suffragans. He exercises visitatorial power in a diocese on a memorial signed by two-thirds of the clerical and lay members of a Diocesan Synod.

Quorum—A majority of the bishops and one-fourth of the members of each order of delegates.

The relation of the two Houses and the procedure is similar to what prevails in General Synod.

Canons (XXIII.) *include provisions on the following matters:*—

1. Election of the metropolitan by the majority of bishops.

2. Metropolitan to preside over House of Bishops, and to con-

vene and be president of Provincial Synod. He exercises visitatorial power in a diocese on a memorial of request so to do signed by two-thirds of the clerical and lay members of the Diocesan Synod.

3. Trial of a bishop for—

(*a*) Crime or immorality.

(*b*) Heresy. (Doctrine contrary to that held by the Canadian branch of the Church of England.)

(*c*) Wilful violation of constitution or canons of Provincial or Diocesan Synod.

A charge is preferred by a bishop or seven male communicants of good standing, of whom three are to be priests. Action has to be taken on rumour at instance of bishop affected and through the appointment of a board of inquiry. Trial is by a majority of conprovincial bishops.

4. House of Bishops (the majority a quorum) to be Court of Appeal from Diocesan Court with three lay assessors.

5. Sub-division of dioceses and formation of new dioceses by House of Bishops, with concurrence or on application of synods of dioceses concerned.

6. Election of missionary bishops in Provincial Synod. Nomination by the Upper House and concurrence of the Lower House.

Every missionary bishop has a seat in the Upper House, and regularly reports to it.

7. Use of shortened services in accordance with the English Act of 1871 sanctioned.

8. Alterations or additions in Prayer Book, Articles, and version of Scriptures by Provincial Synod on certain conditions, viz., such must be enacted at one session, and if not an alteration or addition made by the Church in England in her Convocations and authorised by Parliament, confirmed at another by two-thirds of the Upper House and two-thirds of each order in the Lower House.*

9. The Lectionary adopted by the Convocation of Canterbury and enacted by the Imperial Parliament accepted.

II. *Rupertsland.*—(Dioceses of Rupertsland, 1849; Moosonee, 1872; Mackenzie River, 1874; Saskatchewan, 1872; Calgary, 1887; Athabasca, as created by separation from Mackenzie River,

* They have issued a thorough report on the English Canons of 1603.

1883; Keewatin, 1901: Qu'Appelle, 1884; Yukon, 1891.) Much the same constitution as Canada, but the two Houses are not called Upper and Lower, but House of Bishops and House of Delegates.

The clerical and lay delegates consist of not more than seven from each order for each diocese.

The Bishop of Rupertsland is the metropolitan, and, on a vacancy, two names are chosen by the synod of the Diocese of Rupertsland, of whom the House of Bishops selects one for confirmation.

The constitution of this synod contains special provisions—

(*a*) for the constitution of Diocesan Synods;

(*b*) for the appointment of bishops in cases other than that of the metropolitan see. In these the bishop is to be elected in synod as soon as there are at least six clergy in a diocese in priests' orders, properly endowed or supported. The election must be confirmed by the metropolitan and two other bishops of the province. Any bishop of the province may object to an election on specified grounds.

In the case of dioceses not having six clergy (priests) and whose bishops are wholly or in the main supported by a missionary society, and in which the majority of the clergy are missionaries of that society wholly or mainly supported by it, the selection is by the society after consultation with the metropolitan and at least two other bishops of the province.

In all other cases the House of Bishops selects, subject to the assent of the House of Delegates, if the vacancy occurs within three calendar months of the date of the next meeting of the Provincial Synod, otherwise subject to the assent of the majority of the provincial bishops, or three of them, with the metropolitan, and of the standing committee of the House of Delegates.

An assistant bishop with *jus successionis* (except in the case of Rupertsland) can be appointed subject to approval of the Provincial Synod. He has a seat in the House of Bishops, but can vote only in the absence of the diocesan;

(*c*) for the sub-division of a diocese by the Provincial Synod with the consent of the bishop of that diocese, and the amalgamation of dioceses with the assent of the bishops concerned;

(*d*) enabling the Church of the Province to accept any alterations in the version of the Bible or the formularies of the Church which may be adopted by the General Synod;

(*e*) recommending for use in the province any prayer or form of prayer drawn up by the House of Bishops for any special object not provided for in the Book of Common Prayer;

(*f*) enabling a diocesan bishop to permit the abridgment of the services and to draw up a special service for any emergency in the diocese, conforming, however, as nearly as circumstances allow, to sec. 3 of the Act of Uniformity Amendment Act, 1872.

III. *Ontario.* — (Dioceses of Toronto, 1839; Huron, 1857; Ontario, 1862; Algoma, 1872; Niagara, 1875; Ottawa, 1896.) Constituted by Act of General Synod in 1911 (see Canon VIII). First session held in 1912.

The occupant of the See of Algoma is the present archbishop and metropolitan.

The constitution and canons of this synod are similar to those of the Provincial Synod of Canada, but there is a special provision for a Provincial Council, the function of which is to carry on the work of the Provincial Synod between sessions. It is composed of bishops of the Upper House, together with two clerical and two lay delegates from each diocese, and it meets annually at least. There is also an executive committee of this Council, consisting of three bishops, three clergy, and five lay delegates.

IV. *Columbia.* — (Columbia, 1859; New Westminster, 1879; Caledonia, 1879; Kootenay, 1900.) Until 1911 all these dioceses were extra-provincial, though represented in General Synod. The ecclesiastical province was constituted by an Act of General Synod of that year (see G. S., Canon XI.), and made coterminous with the civil province of British Columbia, the law of which enables any religious society or congregation of Christians competent to hold and deal with land for its purposes, and to sue through trustees (Religious Institutions Act, 1897). The Provincial Synod consists of bishops within the province and diocesan delegates elected in Diocesan Synod (four clerical and four lay delegates from each diocese).

The Diocesan Synods.

While there is much that is common to all dioceses in the constitution and canons of the several synods each has marked peculiarities of its own, as for instance on the important subject of patronage. We must, however, be content with three specimens, each taken from a different province.

I. *The Toronto Synod* (*Province of Ontario*).—This synod was incorporated in 1869 (32 Vict., c. 51)—the first Diocesan Synod in any of the colonial churches. Its constitution is embodied in fifty-six sections. The synod consists of the bishop, any *suffragan* and coadjutor, the priests and deacons (licensed) of the diocese, and lay representatives of each parish or mission, male communicants of full age and standing—not exceeding three per unit—annually elected at the Easter vestry by the lay members of full age (male and female), who are registered as habitual worshippers with a specified congregation and no other on their own declaration (in the prescribed form). There are synod dues, and no representative may sit in Diocesan Synod until the assessment on his parish or mission is paid. The synod meets annually, the bishop, or in his absence the senior dignitary or clergyman, presiding.

There are two honorary secretaries of the synod, one a clergyman elected by the clergy, and the other a layman elected by the laity. There is also a secretary-treasurer elected by the executive committee (bishop, honorary secretary, and ten clerical and ten lay members, half of each appointed by bishop and half annually elected).

The quorum for a synod is one-fourth of each order. The right of a member to a seat in synod may be challenged, and is determined by the synodal court on contested seats, consisting of chancellor or registrar, with two clerical and four lay members appointed by the bishop.

Functions include—

1. Election of bishop. Clergy and laity voting separately by ballot; the clergy as individuals, and the laity by parishes. If two-thirds of the clergy are present and vote, and two-thirds of the parishes entitled to vote be represented and vote, a majority of votes in each order determines the choice; otherwise there must be a two-thirds majority of each order. A suffragan and coadjutor (who has *jus successionis*) is elected in the same way on the diocesan signifying his desire for one, and the synod declaring by resolution that the election of one is necessary.

2. Election of delegates to Provincial and General Synod, and of the elective members of the executive committee; the latter are elected on a system of proportional representation.

3. Enactment, amendment, repeal of canons, &c., and passage of resolutions. No synodal act or resolution is valid without concurrence of bishop and of a majority of members of synod present or of a majority of both orders if a vote by orders is required.

The general administration of the affairs of the diocese is in the

main vested in ten standing or special committees, *e.g.*, Endowment and Land, Clergy Commutation Trust Fund, Mission Board, Widows and Orphans and Theological Students Fund, Church Extension Statistics and Assessment, Sunday School Book and Tract, Audit, Superannuation Fund. All conduct their business under canons and bye-laws. The bishop is *ex officio* a member of all.

N.B.—The synod is also expressly empowered by statute (62 Vict. (2), c. 111, s. 16) to prescribe the qualifications of clergy and lay representatives of parishes and missions for seats in synod.

Property.

(A) The bishop has statutory powers of administration and alienation of property, real and personal, vested in or conveyed to him for the use or endowment of his see or of the church in his diocese, or of any particular church, mission, &c., therein.

(B) Lands or personalty vested in an incumbent can be disposed of with the consent of bishop and synod. (34 Vict., c. 79.)

(C) The synod has statutory powers of consolidation and management of its trust property and of issuing debentures, mortgaging and leasing under 54 Vict., c. 101.

Parochial Administration.

Patronage of rectories, incumbencies, and missions (except missions sustained by mission board) is in the bishop; but before he appoints he must consult with the wardens and lay representatives of the parish or mission. The canon on this has been interpreted in *Johnson* v. *Glen* (26 U. C., Ch., 162).

Sustentation.—In all cases in which the clergy's stipends are not wholly derived from local endowment and the clergymen and wardens apply to the bishop, and in all cases when there is a vacancy, the bishop is required to commission a clergyman of the diocese and one lay member of synod to visit, confer with the congregation, and report as to the local resources and liabilities, and no appointment is made until the local contribution is assured.

The Christmas offertories are appropriated to the sole use of the incumbent.

Parochial Tribunal.—This consists of minister, wardens, and two other elected members of the congregation. It determines the list of members qualified to vote at elections, and hears all applications for leave to be entered on such list.

Erection and division of Parishes.—The clergyman and wardens of each settled cure must from time to time confer with those of the adjacent cures as to rearrangement of boundaries, and report to the bishop, and if the bishop approves the rearrangement takes effect *ipso facto;* otherwise there is a commission of investigation issued by the bishop to two clergy and one layman outside the locality concerned. If the bishop approves of their report, the rearrangement suggested by them takes effect.

If a new or distinct parish is desired by parishioners concerned, the bishop on their memorial *cum causis*, and on consent of all concerned, carries it out (subject where applicable to sec. 17 of the Church Temporalities Act, 1841). The bishop can overrule objections or appoint a commission and act on its report.*

The building of churches and parsonages is subject to prior notification to and approval of the bishop, who consults the archdeacons and rural dean. Seats are in all cases where practicable to be free and unappropriated.

Security and protection of Church Property.—The cost of repairs (including those of parsonage) is defrayed by the vestry, the incumbent being responsible only for dilapidations arising from personal default.†

Superannuation List.—A clergyman has the right to be placed on this after thirty-five years' service in the diocese, or forty years' ministry in the province, of which ten years have been served in the diocese, or if he is sixty-five and has served ten years in the diocese. In other cases on application to the bishop, who, if against it, appoints a commission and acts one way or the other on its report.

Churchwardens.—Must be members of the Church of England of full age, and members of the vestry (Church Temporalities Act, sec. 4), one appointed by the rector or incumbent, and the other annually elected at the Easter vestry. They are a corporation with perpetual succession, and appoint and fix salaries of clerks of the vestry and of the church, organist, and sexton, and other subordinates (Church Temporalities Act, ss. 6 and 13; 47 Vict., c. 89). See, too, other provisions of the Church Temporalities Act as to their powers and duties, and see Canon XXIII. of Consolidated Canons, 1907, which incorporates relative provisions of the English Canons of 1603. Sidesmen are chosen at the Easter vestry meeting, half by the incumbent and half by the vestry. Offertory collections are to be applied to any special purposes

* Forms of decree in these cases are printed with the constitution, &c., of the Diocese of Montreal.

† The Church Temporalities Act placed church and churchyard under the immediate care of the parish acting through the vestry.

previously announced, as may be directed by the vestry, for the benefit of the poor or for such other pious and charitable uses as minister and wardens decide. If they disagree, the matter has to be referred to the bishop.

Ministration.—No clergyman may absent himself from his charge for more than four weeks at a time without the written consent of the bishop or in his absence of his commissary. (Provincial Synod, Canon VI.)

The Diaconate.—A deacon need not surrender his worldly calling or business (such calling being approved by the bishop) unless he is a candidate for the office of priest; but every deacon placed in charge of a parish or mission must be under the direction of a neighbouring priest until he be advanced to the priesthood. (Canada, Provincial Synod, Canon XVIII.)

The Vestries.—(A) In the case of places of worship in which the sittings are not free, the Church Temporalities Act, 1841, applies, and all the pew and sitting-holders (male and female) constitute the vestry, and its proceedings are regulated by the Act. But by an Amendment Act of 1866 the Provincial Synod is empowered to make changes or amendments by canon of the provisions of the Act of 1841.

(B) In the case of places of worship in which the sittings are free, the vestry, except in the case of a first vestry held in connexion with a new congregation, is composed of all who are at the time entitled to vote for lay representatives in synod of the parish or mission. In the excepted case the first vestry is to be composed of male members of the congregation who are of full age and members of the Church of England, and subscribe a declaration to that effect, and of their intention to be habitual worshippers with that congregation during the ensuing year, and not to vote as members of any other congregation during that period.

Differences between Clergy and Parishioners.

1. The bishop can on request of five qualified parishioners or of the clergyman appoint a committee of two members of synod (one clerical and one lay) to bring about a settlement, and if they within a month of their appointment report that they have failed and that for reasons to be specified they consider it detrimental to the interests of the church that the incumbent in question remain in his cure, the bishop is to issue a commission to two clergy and one specially qualified layman of the diocese to inquire and report, and the bishop is to take such action on the report as may seem to him desirable, and may suspend or remove the incumbent, who

on neglect or refusal to obey the bishop's order is punishable for contumacy under the canon on church discipline.

(This provision has been confirmed by statute (62 Vict. (2), c. 111). There is a similar provision in other diocesan canons, *e.g.*, Nova Scotia and Rupertsland.)

(In Ontario the vestries are composed of members of the church, and of no other body, male and female, of full age (and where sittings are not free, paying their quota for pew or sitting), and habitual attendants at the services for a period of at least six months previous to vestry meeting. In some cases habitual attendance at the services is in itself a sufficient qualification.*)

II. *The Nova Scotia Synod* (*Province of Canada*).—This synod is incorporated under State enactments which culminated in an Amending and Consolidation Act passed in 1911, and known as the Church of England Act, which recognises the bishop as a corporation sole with perpetual succession, &c., and the synod as a body politic and corporate with power to hold, manage, and dispose of property real and personal. All property theretofore vested in the Diocesan Church Society was vested in the synod.

There are also the following provisions:—

(*a*) Clergy licensed or instituted by the bishop of the diocese may alone officiate in it, and no licence or letters of institution may be refused by the bishop without signification of reasons within three months of the application.

(*b*) Parishes may be divided, enlarged, rearranged, &c., under specified conditions.

(*c*) The rector, wardens, and vestry of every parish are incorporated, and all parochial property is vested in the corporation which has a common seal, and can sue and be sued, and sell the glebe lands and other real property belonging to the parish.

(*d*) There must be an annual meeting of the parishioners convened by the incumbent, at which the wardens and vestrymen are elected. The persons qualified to vote are those of full age of both sexes, who are members of the Church of England habitually attending the services of the Church within the parish, and regularly contributing the requisite amount (determined by the parishioners) to the support of the parochial ministrations, and certified as qualified by warden or vestry clerks.

* There are some fifty general statutes (State) affecting the action of this diocese. The principal ones are set out in the book of the constitution, &c., of the diocese, published in 1895. (See Part VI.)

(*e*) The incumbent is to be elected by ballot by a majority of the parishioners. There is lapse to the bishop on neglect to elect within twelve months of vacancy.

Under the constitution of the synod every licensed clergyman of the diocese has a seat in synod, but presbyters only may vote. The lay representatives must be male communicants of full age resident in the diocese, having communicated within twelve months last preceding their election. There are two lay representatives of each parish, mission, or district annually elected.

(*f*) Each parish, mission, or district represented in synod is assessed for the purposes of the synod and the see income.

(*g*) The synod may deliberate and decide on all matters affecting the interest of the Church in the diocese, but may not deal with matters affecting its doctrine or worship.

The Constitution and Canons.

In the constitution of the synod (which is preceded by a declaration of principles) are contained provisions as to membership, organisation, jurisdiction (the synod may not deal with matters affecting the doctrine or worship of the Church), order of proceedings, duties of officers, committees, the diocesan mission board, widows and orphans and endowment funds, endowment of parishes, rural deaneries and deans, parish registers.

The canons contain the following provisions (*inter alia*):—

(i.) for the discipline of the clergy;

(ii.) relating to the admission of candidates into the ministry;

(iii.) for the election of the bishop by the clergy and laity of the diocese;

(iv.) for statistical returns by clergy and licensed readers, which have to be tabulated by the diocesan secretary and printed in the year-book;

(v.) for a standing committee of synod (six clerical and six lay members) for the augmentation of the episcopal income;

(vi.) for regular statistical returns from each parish;

(vii.) for settlement of parochial differences.

III. *The Synod of the Diocese of Rupertsland.*—The constitution provides that the synod shall consist of the archbishop, the clergy licensed to the cure of souls or holding office in any college or school under the jurisdiction of the bishop and not under ecclesi-

astical censure, and lay delegates being male communicants of at least one year's standing, and of full age, elected by the male communicants of each parish of at least six months' standing. A communicant is one who has communicated at least three times a year where he has had opportunity of so doing. Each congregation recognised by the archbishop can send one or more delegates according to the number of the registered communicants, but no congregation can send more than three delegates.

The synod as a rule is to meet annually. No resolution of the synod is effective without the concurrence of the archbishop and a majority of the clergy and laity present. The vote of clergy and laity is to be taken collectively, but any member of the synod may demand a vote by orders.

The treasurer of the synod and the chancellor of the diocese are *ex officio* members of the synod.

There is to be an executive committee of synod consisting of the archbishop or his commissary, the dean and archdeacons, the chancellor, the secretary and treasurer of the synod, and eight clergy, and ten laymen.

The canons include provisions for:—

1. The declarations of assent and submission and against simony to be made, and the oaths of allegiance and canonical obedience to be taken on ordination, licence, and institution.

2. The appointment of an administrator of the diocese *sede vacante*, &c.

3. *Parochial Organisation:* A new parish or mission is formed by deed executed by the diocesan, who can create a new parish out of existing parishes or add an unorganised district to a whole or portion of an existing parish; but the inclusion of a part of an existing parish in a new parish must be with the consent of incumbent and a majority of the vestry of the former. If, however, such consent is refused the matter is to be referred to the executive committee of the diocese, and if they report in favour of the inclusion the archbishop may effect it. Boundaries of parishes may be altered on specified conditions.

Whenever a parish shall become entirely self-supporting it is to be called a rectory and its incumbent is to be styled rector.

Every male member of the church he attends, being of full age, and having subscribed a declaration that he is an attendant at the church, and a member of the Church of England in Rupertsland, and having been for the preceding three months a seat or pew-holder, or for three months in the preceding year a recognised attendant at the church, is eligible as a vestryman, and if a communicant as a churchwarden. Of the churchwardens one is to be appointed by the incumbent and the other is to be elected by the parishioners. There are to be not less than four nor more than twelve vestrymen elected by the parishioners. The incumbent

and licensed assistant or assistants are to be *ex officio* members of the vestry.

The duties of the churchwardens and vestrymen, respectively, are enumerated.

The incumbent is *ex officio* chairman of all parish or vestry meetings, and failing him his churchwarden.

4. *Parochial Statistics:* Every minister having the cure of souls in the diocese is required to annually prepare these and deliver them to the secretary of the synod for inclusion in the synod report.

5. *Missions and Diocesan Funds:* All the trusts, properties, and funds of the synod are to be administered and managed by the executive committee, to which also is committed the care, under the direction and general supervision of the archbishop, of the home mission work of the diocese. There is to be a secretary of the synod, a treasurer, and a standing committee called the mission committee. There are standing directions as to the application of collections at special seasons of the year, and the collection at the harvest thanksgiving service is to be given to the home mission fund.

6. *Discipline:* There is a special canon as to the enforcement of discipline in the case of priests and deacons, which canon is declared to be subject to the provincial canon of discipline.

7. *The Removal of Incumbents:* (To the effect specified *supra*, pp. 137, 138.)

8. The remaining canons relate to lay readers, rural deans, ruri-decanal chapters and meetings, the clergy superannuation fund, and general rules and regulations.

Courts.

The Bishop's Court.

I. *Toronto.*—This is in synod (see Consolidated Canons, 1907, No. II.) declared to be the court for the trial of all offences of laity as well as clergy. It is composed of bishop and two clerical and two lay members of the executive committee of the diocese appointed by the bishop. Three are a quorum. The canon specifies the offences triable in this court.*

II. *Nova Scotia.*—In the case of any clerk in Holy Orders charged with an offence against the laws ecclesiastical, or concerning

* In the case of the Montreal Diocese, the court, which is composed of thirteen priests, annually elected in synod, tries charges against clergy alone.

whom there exists scandal or evil report, the bishop must, on the application of 7 male communicants of the parish, issue a commission to 5 presbyters of not less than seven years' standing, any 3 of whom shall inquire and report, and if a *prima facie* case is reported and the accused does not consent to judgment, the trial takes place before the bishop with 3 clergy, or 3 clergy and 3 laity as assesors, chosen from a diocesan board of discipline, consisting of 13 priests of not less than ten years' standing, and 13 lay members of synod. The bishop may issue an inhibition to the accused pending the trial.

III. *Rupertsland.*—Any priest or deacon may be tried for crime or immorality, heresy or false doctrine, wilful violation of the constitution, canons, and regulations of the Provincial Synod or of the Synod of the Diocese, or of such canons of the General Synod as have been accepted by the Provincial Synod (Provincial Canons). A charge may be preferred to the archbishop by at least three communicants, and a commission may issue to three persons, of whom one must be the chancellor of the diocese or an archdeacon or rural dean within the diocese, to inquire and report. If they report that there is sufficient *primâ facie* ground for proceedings, and the archbishop or complainants think fit to proceed, the trial ultimately takes place before the archbishop (with 3 assessors if the charge be not admitted).

An interim inhibition can be issued as in Case II.

The Metropolitan Court.

I. & II. *Canada and Ontario.*—(See *supra*, Provincial Synod; and Consolidated Canons, 1907, No. II.) Besides being court for trial of bishop, it is also a court of appeal from the bishop's court.

(*a*) The non-provincial bishops, all of whom are required to attend, presided over by archbishop, constitute the court for trial of a bishop. The decision of the majority binds. The court appoints a legal assessor.

(*b*) In the case of appeals from a diocesan court the majority of the House of Bishops constitutes the court. There are three legal assessors—lay communicants in good standing and judges or barristers of at least ten years' standing. They must be nominated by the Upper House and accepted by the Lower House.

III. *Rupertsland.*—The metropolitan court is a court of appeal from the diocesan court only in cases of heresy or false doctrine, when the House of Bishops is constituted as such. In the case of a charge against a bishop, the metropolitan—or in the case of a charge preferred by the metropolitan, the senior bishop—on being satisfied that it should proceed, and if it is not admitted,

convenes the bishops of the province for the trial, at which he presides. In cases of heresy and false doctrine there is a final appeal to the Archbishop of Canterbury.

The Supreme Court of Appeal.

This was finally constituted in 1905 (see Canons of General Synod, No. 1.). It is a final court of appeal (of whose functions the scope has been indicated *supra*, page 129), and is composed of all the bishops of the Church of England in Canada who have seats in General Synod, and of five lay assessors, communicants in good standing, and judges or barristers of at least ten years' standing at the bar of any of the provinces, appointed by the Upper House and approved by the Lower. Three at least of these sit as members of the court during the hearing of an appeal, but not for purpose of giving judgment.

The functions of the Supreme Court may be exercised by a judicial committee, consisting of primate and metropolitans and other bishops, selected by the House of Bishops, and so as to make up the number of the committee to not less than seven. A decision on a question of doctrine must be concurred in by two-thirds of the bishops of the Church in Canada if it is to be regarded as affirming or denying any doctrine.

The president of the court is the primate, next to him the metropolitans in order of seniority. Failing these, such bishop as may be elected president by the bishops sitting on the appeal. A constitution of the province of Rupertsland provides that if a Diocesan Synod disputes the decision of the Provincial Synod as interfering with what falls within its proper sphere, the matter is to be referred to the Supreme Court of Appeal, whose decision is to be final.

STATED RELATIONS TO CHURCH OF ENGLAND AND OTHER BRANCHES OF THE ANGLICAN CHURCH.

1. By a solemn declaration made in the first session of General Synod the bishops and delegates declared this Church to be and desired it to continue in full communion with the Church of England throughout the world, &c. Also, that they were determined to hold and maintain the doctrine, sacraments, and discipline of Christ as the Lord has commanded, and as the Church of England has received and set forth the same in—

(1) The Common Prayer Book;

(2) The Ordinal;

(3) The XXXIX. Articles.

2. Any alteration in or addition to the Common Prayer Book, or Articles made by the Church of England in her Convocations

and authorised by Parliament may be accepted by the Provincial Synod at one session without subsequent confirmation in another. (Canada, Provincial Synod, Canon XIII.)

Bermuda.

The earlier ecclesiastical history of these islands, which were first part of the See of Nova Scotia and then of Newfoundland, is stated in *Ex parte Jenkins* (1868, L. R. 2, P. C., 258). A constitution for a synod of the Church of England in Bermuda was adopted at a public meeting of the clergy and laity in 1878, and confirmed by the Legislature. The synod was incorporated, and its relationship to the Church of England was declared in the same terms as in the case of Canada. The synod was empowered to alter its constitution by the Synod Act, 1898, and a new constitution was adopted in 1900. All clergy (cathedral, incumbent, and licensed) are members. Each parish is entitled to elect two lay representatives—communicants of full age. The vestry of the cathedral elects one such lay representative. The bishop's dissent from a measure adopted by a two-thirds majority of each order is overruled if, at the next meeting, the same majority is secured. The synod elects the bishop by a two-thirds majority of each order. The synod presents to all vacant benefices (by transfer from the Crown under the Vacant Benefices Act, 1882), subject to objection to their presentee on the part of the church vestry concerned. The constitution of the cathedral was confirmed by the Cathedral Act, 1894. The State grants, payable under the Clergy Acts in aid of the clergy and ministers of the various Christian churches and denominations in these islands, have now ceased. (The Clergy Act, 1896.)

Newfoundland.

The see here was created under letters patent in 1839. Subsequently a Diocesan Synod was constituted and incorporated in 1877; all Church properties were vested in it, with power to change and modify the disposition and application of them for the purposes of the Church. (Diocesan Synod Property Act, 1877.) The canons and rules of the diocese were revised in 1904. They provide that the Church in the colony shall be in spiritual union and communion with the Church of England, and shall be entitled "The Church of England in Newfoundland." It accepts the Common Prayer Book, XXXIX. Articles, and Ordinal of the Church of England, and the canon of Scriptures as received by the Church of England, also any alterations adopted by the Church of England. The synod elects its own bishop by a majority of two-thirds of each order.

At the present moment Bermuda and Newfoundland have the same person as bishop.

THE CHURCH OF ENGLAND IN AUSTRALIA AND TASMANIA.

The first Australian see was constituted by letters patent in 1836. Until then Australasia, originally within the limits of the East India Company's charter, formed part of the Diocese of Calcutta, and constituted an archdeaconry under letters patent issued in 1824.

By further letters patent issued in 1826 the Corporation of Trustees of Church and School Lands was constituted, and large areas of land were vested in it for the religious and educational purposes of the Church of England. This corporation was, however, soon after dissolved by Colonial enactment. (3 & 4 Will. IV.; No. 11.)

The new see, of which the archdeacon (Broughton) was the first bishop, was declared to be subject and subordinate to the Archiepiscopal See of Canterbury, to whom the bishop was required to take the oath of due obedience.

An endowment was provided out of the Colonial Treasury in favour of the Church concurrently with the Roman Catholic Church and the Presbyterian and Wesleyan Communities. (7 Will. IV., No. 3; 8 Will. IV., No. 8; and see also 21 Vict., No. 4.)

The See of Tasmania was constituted as a suffragan see for Van Dieman's Land by letters patent in 1842.

The See of Adelaide was similarly constituted in 1847; as also the Sees of Melbourne, Newcastle, and New Zealand (all four bishops being consecrated in Westminster Abbey by Archbishop Howley). The former Bishop of Australia now became Bishop of Sydney or metropolitan under letters patent.

In 1850 the bishops of the province met at Sydney, when (*inter alia*) the creation of Provincial and Diocesan Synods of bishops and clergy, and Provincial and Diocesan Conventions of Representative Laymen (communicants), was recommended. Church membership was considered to be open to all duly baptized persons who conformed to the doctrine, &c., of the Book of Common Prayer, and a disciplinary system (similar to that constituted in Canada) was suggested.

Reservations of land in favour of the Church were made by the State in the case of both New South Wales and Tasmania, and Victoria in 1854-5 (subsequently revoked in 1862 and 1868, and 1871).

There were no reservations in the case of South Australia or West Australia.

In Queensland the Parliament in its first session (1860) terminated the State aid originally granted.

Of the subsequent dioceses those of Perth (1857) and Brisbane (1859-60) were constituted by letters patent, while those of Goulborn (1863), Grafton and Armidale (1867), Bathurst (1869), were constituted otherwise than by letters patent, a process which eventually had been called in question. (See *supra* and *infra*.)

In 1868 another Episcopal Conference was held at Sydney, when (*inter alia*) it was resolved that the relation of the Church of England in Australia to the Church at home is one of identity of doctrine and worship, and subjection as far as practicable to the Law of the (Established) Church, that a General Synod be constituted to maintain the relation of the Churches in Australia to the Church at home and in the various colonies, and also to secure unity of doctrine and discipline between the several Australian branches; that a tribunal of the General Synod be constituted for the trial of bishops and for the decision of questions of faith and worship; and that every bishop on consecration take the oath of due obedience to the Archbishop of Canterbury.

In 1872 (three years after the notification of the Imperial Government's policy of religious equality) the bishops, clergy, and laity met in general conference in Sydney, and decided to resolve themselves into a General Synod with the Bishop of Sydney metropolitan and primate.

In 1905 the Provinces of Victoria and Queensland were constituted, the Dioceses of Tasmania, Adelaide, and Perth not being comprised in either of these provinces.

In 1914 the Province of Western Australia was formed, comprising the Dioceses of Perth, Bunbury (cut off from Perth in 1914), Australia, N.W. (foundation 1912), and Kalgoorlie (founded in 1914), with the Archbishop of Perth as metropolitan.

The Several Provinces.

I. *New South Wales* (comprising the Dioceses of Sydney, Newcastle, Goulburn, Armidale, Grafton (divided from Armidale in 1913), Bathurst, and Riverina).

In 1836 and 1837 there were passed two Colonial enactments (7 Will. IV., No. 3; and 8 Will. IV., No. 5), the one for the promotion of church and chapel building and for the provision of maintenance for ministers of the Christian religion, and the other to regulate the temporal affairs of churches and chapels of the United Church of England and Ireland in New South Wales, and this contained a provision that trustees of Church property must be churchmen. In 1857 another Act gave the trustees powers of leasing, &c., and imposed on them the duty of accounting to the bishop.

A private Act of 1866 (30 Vict., No. 2), which declared that certain constitutions, drawn up by bishops, clergy, and laity in

conference, should, for all purposes of property, be binding on the members of the Church, and that all persons then or thereafter holding property, real or personal, in trust for that Church, and not subject to express trusts, be held subject to the rules of the Church, was repealed in 1902. Meanwhile the Church of England Trust Property Incorporation Act, 1881 (44 Vict., No. 3), after declaring the proper title of the Church here to be "The Church of England in New South Wales," provided for the incorporation of diocesan trustees chosen in synod, and the vesting of diocesan property in them, subject to express trusts and otherwise, as the Diocesan Synod should direct.

The Sydney Bishopric and Church Property Act, 1887, enabled the Diocesan Synod (Sydney) to deal with Church lands freed from consecration and other express trusts, and conferred powers of application and investment; while an enactment of 1889 (52 Vict., No. 2), the Church of England Property Act, after referring in the preamble to the cesser of the practice of creating sees by letters patent, contains further enabling provisions as to the tenure and disposal of Church property, but not so as to affect the property comprised in the Act of 1887. These enabling provisions were subsequently extended to other dioceses, including Goulburn. (56 Vict., No. 1; 60 Vict., No. 5.)

The Establishment Acts of Will. IV. were repealed in 1897 (Public Act No. 16), and in 1902 was passed the Church of England Constitutions Act Amendment Act, which gave legal force and effect to the synodal constitutions for the management and good government of the Church of England in New South Wales, and, so far as property is concerned, made them binding on its members. All persons then or thereafter holding real or personal estate in trust for that Church, other than what was subject to an express trust, and except lands the management of which had been specially provided for by Ordinance or Act of Parliament, were to hold the same subject to the constitutions, ordinances, and rules of synod, and to be bound thereby as fully in all respects as if the same were contained in a deed.

Scheduled to the Act was an exposition of a Diocesan Synod as synodically constituted in 1895, and of the Provincial Synod.

The constitution of the Provincial Synod was further defined by the Synodal Ordinance of 1907.

Diocesan Synod.

Meets annually on summons by the bishop who, or whose commissary, presides, and may adjourn, prorogue, or dissolve it. A new synod must be elected and convened triennially. President may not vote in synod. Each synod may make its own ordinances *re* order and good government, and the regulation of the affairs of the church, including the management and disposal of its property

(not diverting any property specifically appropriated as the subject of a specific trust, nor interfering with any vested rights).

Mode of electing lay (male) representatives to synod by members of the church of full age being occupiers of seats or residents prescribed. Synod may establish a tribunal for trial of clergy.

Provincial Synod to determine offences triable, among which are to be breaches of discipline and questions of doctrine and ritual. The tribunals to have the powers of arbitrators under the secular law. Synods may provide for dealing with cases of incapacity and inefficiency in the discharge of ministerial duty. The bishop is elected under synodal arrangements, and the election must be confirmed by the metropolitan and con-provincial bishops, or a majority of them; alternatively he may be selected by delegation to any archbishops or bishops in England, and he may be consecrated in England by mandate of the Crown.

In the Diocese of Sydney the synod elects two secretaries (one clerical and one lay), a chairman of committees, a committee of elections and qualifications, which deals with all questions relating to the validity of elections of representatives, and a standing committee composed partly of *ex officio* and partly of elected members, who make all arrangements for the sessions and also act as a council of advice to the bishop.

Provincial Synod.

Provision for assembly of bishops and clerical and lay representatives on summons of metropolitan, and under regulations made in Provincial Synod, and assented to in Diocesan Synod.

Diocesan Synod and Provincial Synods precluded from making any alterations in the articles, liturgy, or formularies of the Church, except in conformity with any alteration which may be made therein by any competent authority of the Church of England (in England), and no rule, ordinance, or determination may be made in contravention of any law of the State of New South Wales. No provincial ordinance binds the Church in any diocese of the province unless and until accepted by a diocesan ordinance. Provincial Synod can decide on reference to it as to any ordinance passed by a Diocesan Synod and not assented to by bishop.

Provincial Synod, which meets triennially, consists of two Houses (House of Bishops and House of Representatives). Both sit together for deliberation and transaction of business; but on all occasions vote separately. Each House can consult apart on any subject under consideration at the desire of the other. The extent of the representation of each diocese is determined by the number of licensed clergy therein.

The ordinances of the Provincial Synod have not yet been published.

The Metropolitan.

On a vacancy in the metropolitan and primatial see three names for the succession are selected in the Diocesan Synod, and presented to the con-provincial bishops, who expunge one name, and the two remaining are presented to the whole body of bishops in Australia and Tasmania, who expunge another name. The surviving name designates the actual succession. In 1890 the primate took the oath of due obedience to the Archbishop of Canterbury on his consecration in England. The Bishop of Sydney has now become archbishop. (Lambeth Conference, 1897).

II. *Victoria.*—State aid for the advancement of the Christian religion was abolished in 1871 (34 Vict., No. 391), but there was a formal recognition of religious trusts. In 1854 was passed an Act (18 Vict., No. 45), the Church Constitution Act, enabling any bishop of the United Church of England and Ireland in Victoria to convene an assembly of clergy and laity in his diocese. Synodal acts and resolutions were declared binding on bishops, clergy, and members of the Church, including those relating to advowsons and rights of patronage. The synod was enabled to establish a tribunal for trial of offences constituted as might be deemed expedient, but confined in point of jurisdiction to the clergy.

Regulations affecting the jurisdiction of the Crown in Council, the Archbishop of Canterbury, and the Metropolitan of the Province, require confirmation by the Archbishop of Canterbury.

No act or resolution altering or at variance with the authorised standards of faith and doctrine of the Church to be valid. Incumbent and licensed clergy and lay representatives (communicants) elected by lay resident members of the Church of full age to be summoned to synod. Procedure at such elections prescribed in detail.

A certified copy of the synodal regulations of every diocese under the Act, and of any alterations made from time to time, to be sent to the metropolitan and the Archbishop of Canterbury. The Archbishop of Canterbury may submit them to the Privy Council, and the Crown may, by their advice, allow or disallow them.

This Act also prescribes the constitution of Provincial Synods established in this state. These are to consist of the House of Bishops and the House of Clerical and Lay Representatives. An Act requires a majority of both of them voting by dioceses.

The Provincial Synod may pass rules and regulations for the uniform conduct of and mode of proceeding in all provincial assemblies, subject to allowance and disallowance, as in the case of Diocesan Synods.

In 1873 an Act (36 Vict., No. 454) enabled the Diocesan Assembly to define terms and to replace the term "United Church of England and Ireland" by another. It also provided for the appointment, deposition, deprivation, or removal of any office-bearer in the Church.

In 1904 an Act (Vict., No. 1947) provided for the substitution of the term "synod" for the term "assembly."

In 1884 the Church of England in Victoria was empowered to create corporate bodies of trustees to hold and take transfers of Church property to be held and managed on express trusts, if any, and otherwise as the Church assembly in the diocese might from time to time prescribe. (Trusts Corporation Act, 48 Vict., No. 797.)

All these Acts are still in force, and in 1903 the first assemblies of the clergy and laity of the Dioceses of Ballarat, Bendigo, and Wangaratta were declared by statute (3 Edw. VII., 1821) to have been duly convened and legally constituted, especially as regards their lay representatives.

In 1905 the Bishop of Melbourne was constituted metropolitan, and has since assumed the title of archbishop. The provincial constitution contains a recital that the province consists of the Dioceses of Melbourne, Ballarat, Bendigo, Wangaratta, and Gippsland, and then provides for the constitution, assembly, and functions of the Provincial Synod, which are similar to those of the Sydney Provincial Synod. The rules made in synod are termed ordinances.

The canons of the Diocese of Melbourne (1878) are referred to in the report of the Ecclesiastical Courts Commission (1883), in conjunction with those of the Episcopal Church of Scotland, as containing many original provisions (p. xi.). The synodal acts include provisions for a Diocesan Council, the sub-division of the diocese, election of representatives in Provincial, General, and Diocesan Synod, the constitution of synod and parishes, the consecration of churches, the appointment and superannuation of clergy, the exchange of cures, the election of male communicants of full age by male parishioners of full age to the diocesan assembly, for meetings of that assembly, for board of electors (clerical and lay) of the archbishop, for the constitution of the cathedral chapter (of which there are lay members), for trial of clergy, for the appointment, rights, powers, and duties of vestries, churchwardens, trustees, &c.

For the other dioceses comprised in this province there are ordinances of a similar character.

III. *Queensland.*—Unlike New South Wales and Victoria is not affected by earlier statutes as regards constitution or property. Consensual compacts were entered into between the bishops, clergy, and laity of the Dioceses of Brisbane and Rockhampton re-

spectively in 1868 and 1893; and then the constitutions of the two dioceses were recognised and incorporated in 1895. (59 Vict., No. 15.) The diocesan regulations are fully set out in the schedules to this Act which was amended by 1 Edw. VII., No. 21, sec. 2 of which declares the title of the diocesan body to sell, mortgage, and lease in such manner as the synod or its committee may direct any lands vested in it solely upon trust for Church of England purposes.

Under the arrangement of 1905 the Diocese of Brisbane has now become a metropolitan see, and comprised in the province are five dioceses: Brisbane, North Queensland, Rockhampton, New Guinea, Carpentaria. Each diocese has its own constitution (containing in the cases of Rockhampton and North Queensland a division into fundamental and non-fundamental provisions) and set of canons providing, *inter alia*, for the election of the bishop and as to his powers and prerogatives, the trial of offences, the composition of the synod, the functions of the Diocesan Council, the constitution of benefices, the regulation of parishes, and (as in the case of Brisbane and Carpentaria) the administration of the cathedral church.

In the constitution or canons of the Diocese of Brisbane are special provisions for the appointment in synod of a committee to act with the bishops of the province or a committee appointed by them in the election of the archbishop.

The Provincial Synod of Brisbane is constituted in manner similar to that established in the other provinces; but the number of representatives of each diocese having a synod is the same in all cases as is the number for each diocese having no synod and for each missionary diocese.

IV. *The Province of Western Australia.*—No records are yet to hand.

The Dioceses not comprised in a Province.

I. *Tasmania.*—As in the case of New South Wales and Victoria, the Colonial statute law (22 Vict., No. 20) authorised assembly in synod and contained detailed directions as to its constitution and method of voting, qualifications of laity (electors and elected) and the tribunals. It empowers the synod to alter its constitution and divide the diocese, and lays down rules as to patronage, management of property, &c.

Enables trustees of property to be appointed and provides for their incorporation. The right of appeal to Privy Council, Archbishop of Canterbury, and Metropolitan is safeguarded; and the synod is precluded from altering or varying from the authorised standards of faith and doctrine, or doing anything repugnant to State law.

Its synodal acts include regulation of patronage and provisions for incumbent's removal on grounds other than misconduct. The bishop can remove on report of commission of three, subject to appeal to the primate.

II. *Adelaide.*—The original letters patent made this see coterminous with South Australia. An Act of 1847 (No. 10) recognised the Church here as a branch of the United Church of England and Ireland, and enabled the bishop to act as the sole trustee of Church property, and provided for supplementing voluntary subscriptions out of public funds. This Act has now expired. The "Church of England in the See and Diocese of Adelaide" is now on a purely voluntary basis. A private enactment, "The Church of England Succession Act, 1893," provides for the vesting of Church lands in the bishop as trustee, and confers powers of appointing new trustees on the synod, which was constituted in 1855, and was subsequently incorporated under the Associations Incorporation Act, 1858. Clergy hold their licences as tenants at will of the ordinary.

III. *Perth.*—In Western Australia there was a State system of concurrent endowment (under which the Church got £20,000 a year) until 1895, when it was abolished by the Ecclesiastical Grant Abolition Act. (59 Vict., No. 25.) Religious bodies can now be incorporated (see 59 Vict., No. 20), which (*inter alia*) provides that any association—

(*a*) with the sanction required by its constitution may change its name;

(*b*) may alter the provisions of its trust deeds, and change its rules and regulations.

Legal recognition is given (as it had been before in 1875 by 38 Vict., No. 18) to the Diocesan Synod—the synod of the West Australian branch of the Church of England—and to the Diocesan Trustees by an Act of 1888 (52 Vict., No. 2), which incorporated new diocesan trustees and vested in them the lands of the Church, and by the Church of England Collegiate School Act, 1885. (49 Vict., No. 19.)

Synodal act of constitution provides for two lay synodsmen to each clergyman and for diocesan and parochial trustees.

Subsequent acts provide for synodal elections, diocesan councils, board of nominators, cathedral constitution, clergy discipline, &c.

In 1882 the synod was empowered (46 Vict., No. 2), as representing "the Church of England in Tasmania," to provide for the appointment and resignation of the bishop, and property vested in the bishop or archdeacon otherwise held for Church purposes was vested in Church trustees.

In 1892 the trustees were empowered to sell lands, and a range of investment of trust of property was prescribed. (56 Vict., No. 4.)

In 1899 there was further power given to amend the constitution. The trustees were constituted a body corporate, and a Diocesan Council was authorised. (63 Vict., No. 6.)

The Lay Franchise.

1. Nearly all the dioceses require of parochial electors a written declaration of Church membership supplemented by registration of membership, residence, contribution to funds or habitual worship, and in two cases at least by the declaration that the member belongs to no other religious denomination.

2. The great majority admit females as voters. In at least four, females are precluded from voting for lay representatives to Diocesan Synod.

Resignation.

In some dioceses clergy, church officers, and lay representatives are required to sign a declaration of submission to the Diocesan and Provincial Synods with covenant to resign if required to do so.

THE CONSTITUTION OF THE GENERAL SYNOD.

House of Bishops.
House of Clerical and Lay Representatives.
} Both Houses sit together for deliberation and transaction of business, but on all occasions vote separately.

Every diocese with under 21 licensed clergy may send 2 clerical and 2 lay representatives.

Every diocese with over 20 and under 31 licensed clergy may send 3 clerical and 3 lay representatives.

Every diocese with over 30 and under 41 licensed clergy may send 4 clerical and 4 lay representatives.

Every diocese with over 40 and under 51 licensed clergy may send 5 clerical and 5 lay representatives.

Every diocese with over 50 licensed clergy may send 6 clerical and 6 lay representatives.

The church of each diocese decides the mode of appointing its representatives, but clerics must be in priests' orders and duly licensed in the diocese, and the laity must be communicants of full age. Synod must meet once at least in five years. Special meetings at primate's discretion or on written request of a majority of the other bishops.

Powers of the General Synod.

1. To constitute an appellate tribunal and a tribunal for trial of bishops.

2. To frame general rules for the formation of new dioceses and provinces.

3. To make rules for confirmation and consecration of bishops and appointment of primates.

4. To communicate with the other branches of the Church of England on matters relating to the general well-being of the Church.

5. To provide for inter-commuication with other reformed Episcopal Churches so far as is consistent with the principles of the Church of England.

6. To regulate the relations of the Church to other branches of the Church of Christ.

7. To promote the cause of home and foreign missions in the Church.

8. To consult on matters of common concern and frame regulations thereon subject to acceptance by each diocese, the mode of such acceptance to be laid down by each.

9. To appoint committees.

10. To alter the mode of holding its meetings and the number of the representatives for the House of Representatives, but the lay must never be less than the clerical representatives.

11. To alter its constitution subject to the assent of at least two-thirds of the dioceses.

Voting.—There must be a majority of both Houses. In the House of Representatives voting is by order unless two dioceses by a majority of their representatives require voting by dioceses. No vote can be taken as the vote of a diocese unless assented to by a majority both of the clerical and lay members representing it.*

The General Synod has—

(*a*) Constituted an appellate tribunal or "The Committee of Appeal of the General Synod," consisting of five members —primate or senior bishop, a bishop elected by the House of Bishops, a clergyman elected by the clerical representatives, a layman elected by the lay representatives,

* No determination of the General Synod is binding on the Church in any diocese unless and until such determination is accepted by the Church in such diocese. (Canon VIII.)

and a layman elected by the General Synod voting collectively. If in the opinion of the committee the matter of appeal concerns a question of doctrine or discipline involving a question of doctrine, it may state a case for the opinion of a body in England called "The Council of Reference," and consisting of the two Archbishops, the Bishop of London, and four laymen learned in the law.

(*b*) Made rules for the confirmation and consecration of bishops, and the election of primate.

(*c*) Created a board of missions of the Church in the dioceses of Australia and Tasmania.

(*d*) Made rules for the formation of provinces and Provincial Synods, and new dioceses, and the election of metropolitans and their designation as archbishops.

(*e*) Constituted a tribunal for the trial of bishops for specified offences (consisting of all the bishops other than the accused and the accuser (if a bishop) with a legal assessor.

(*f*) Made rules for the constitution of a college of theology; and for the appointment of assistant or coadjutor bishops (who have no *jus successionis*).

(*g*) Made rules for the establishment of the Australian Clergy Provident Fund.

STATED RELATIONS TO CHURCH OF ENGLAND IN ENGLAND AND TO OTHER BRANCHES OF THE ANGLICAN CHURCH.

1. This Church to be and continue in full communion with the Church of England and all Churches in communion with her as an integral portion of the one Body of Christ, composed of Churches which, united under the one Divine Head and in the fellowship of one Holy Catholic and Apostolic Church, hold the one faith revealed in Holy Writ and defined in the Creeds as maintained by the undivided primitive Church in the undisputed œcumenical councils; receive the same Canonical Scriptures as containing all things necessary to salvation; teach the same Word of God; partake of the same divinely ordained sacraments, through the ministry of the same apostolic orders, &c. This Church is determined to hold and maintain the doctrine, sacraments and discipline of Christ as the Lord has commanded in His Holy Word, and as the Church of England has received or set forth the same in the Common Prayer Book, Ordinal, and the XXXIX. Articles. Nothing above contained to prevent the General Synod from accepting such alteration of the above-named

matters, books, and formularies as may from time to time be adopted by the Church of England.

2.—(A) The Provincial Constitutions of New South Wales and Victoria provide that no rule, ordinance, or determination of any Diocesan or Provincial Synod shall make any alteration in the Articles, Liturgy, or formularies of the Church except in conformity with any alteration which may be made therein by any competent authority of the Church of England in England.

(B) The Provincial Constitution of Queensland purports to provide that its appellate tribunal shall be subject only to the General Synod of Australia, but the constitutions of the dioceses, other than Rockhampton, require that all questions or disputes about doctrines, formularies, books, or Articles of the Church, shall be decided in conformity with the decisions of the Ecclesiastical Courts in England or any Judicial Committee of the Privy Council.

3. Council of Reference. (See *supra*.)

4. No ornament which would be illegal in England may be placed or remain in any church. (Provincial Church Ordinance, New South Wales, No. 29.)

5. In the Province of Sydney provincial ordinances, and in the Diocese of Sydney diocesan ordinances, are transmitted by the metropolitan to the Archbishop of Canterbury.

General Legal Position.

1. In Australia and Tasmania there is no case in which the original letters patent in relation to the creation of sees are now applicable. The Church here is a voluntary association or an aggregate of voluntary associations:—

(*a*) In some cases based entirely on consensual compact (*e.g.*, Adelaide, Perth, Newcastle, and Brisbane);

(*b*) In other cases recognised and in some material respects defined by the Acts of the local Legislature (*e.g.*, New South Wales, Victoria, and Tasmania);

but in all cases constituted as parts of the Church of England.

The property is held, generally speaking, in trust for the purposes of the Church of England; and what those purposes are depends, subject to the law of the State, on the law of the Church of England as established in the home country, including the law with relation to the doctrines and formularies of the Church as declared by the Judicial Committee of the Privy Council. Trusts

expressed in and contracts based on more elastic phraseology would in case of dispute fall to be interpreted by the secular courts of the dominion, and an expansion of trusts with regard to property in the dominion could only be by authority of the State Legislature or courts.

2. The Commonwealth of Australia is precluded from making any law for the establishment of any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion; nor may any religious test be required as a qualification for any office or public trust under the Commonwealth. (Commonwealth Constitution Act, 1900, sec. 116.) The Federal Government, however, is not hereby precluded from recognising religion and religious worship. The courts, too, would take judicial notice of the fact that the country is a Christian country.

3. This branch of the Church being (unlike the Church of the province of South Africa; see *infra*), under the terms of its constitution, a branch of the Church of England, should it desire to vary from the doctrine or formularies of the Church of England, can as a voluntary association do so, but it may by so doing endanger its endowments or otherwise affect the legal rights of its members unless *qua* such endowments and rights the variation is sanctioned by the State law, or the variation is resolved upon with absolute unanimity. (*Forbes* v. *Eden; Free Church of Scotland* v. *Overtown.*)

4. In 1905 a committee was appointed to inquire into the legal relationship between the Church of England in Australia and that in the mother land. The committee consisted of three archbishops and the Bishop of Perth, who took counsel's opinion here, which was to the effect that the Church in Australia must conform absolutely to the English ecclesiastical law as interpreted by the English ecclesiastical courts.

This opinion was endorsed by counsel in Australia.

The question has been raised, Can this continue?

It has been proposed that applications be made to the several State Parliaments for Acts enabling the Church to adapt itself to meet the local requirements and conditions, and to revise and modify the terms of the trusts under which Church property is held. The matter is likely to be fully considered at the next meeting of General Synod.

THE CHURCH OF THE PROVINCE OF NEW ZEALAND.

(Commonly called "The Church of England.")

The Church of this province at the present moment comprises seven sees (Auckland, Christchurch, Nelson, Wellington, Waiapu, Melanesia, and Dunedin). Five of these were created under letters patent, of which the Crown ultimately on petition accepted the surrender.

When Bishop G. A. Selwyn became the first bishop of New Zealand the New Zealand Company advanced money for the establishment of schools, and agreed to subscribe to church endowment generally sums equivalent to the amount of the voluntary contributions, but there never was any appropriation of land provided for by the State.

In 1850 Bishop Selwyn attended a private conference of six bishops held at Sydney returning as a party to decisions affirming with regard to the Australasian Churches the necessity or desirability of—

(1) Provincial and Diocesan Synods;

(2) sub-division of dioceses;

(3) synodal appointment of bishops;

(4) lay representation as one of three orders carrying a conjoint decisive voice in particular as regards "temporalities";

(5) trial of bishops in Provincial Synod and of priests and deacons in Diocesan Synod or court;

(6) the subjection of the laity to spiritual discipline in the shape of spiritual admonition, exclusion from Holy Communion, and ultimately excommunication.

In 1856 the bishop secured the passage by the General Assembly (the Parliament of the Colony) of an Act to simplify the title to and secure trust property. (20 Vict., No. 2, supplemented in 1863 by 27 Vict., No. 15.) The bulk of the Church's property was at first held in trust by the bishop himself free from the trammels of previous legislation, and of express trusts vested in other bodies or persons. Provision was now made for its transfer to trustees on behalf of the General Synod for the purposes of the Church, and an Act of 1865 (29 Vict., No. 24) expressly enabled each diocese to manage and regulate Church property within its area and recognised every diocesan association as a legal one within the meaning of the Act of 1856.

In 1857 at a conference of bishops, clergy, and laity held at Auckland a constitution much on the lines of that of the American Church was mapped out for "The Branch of the United Church of England and Ireland in New Zealand" on the basis of autonomy and unhampered by the sanction of the State Legislature, reliance being placed on "consensual compact" alone. The constitution then agreed to was revised in 1865, and in the form in which it was then settled it now stands as regards its main features, the General Synod in 1867 altering the original title of the Church to the existing one, and in 1883 recasting the synodal statutes into the form of canons.

Finally, in 1884, provision was made for the incorporation of the trustees of any society, religious, charitable, educational, or scientific. (48 Vict., No. 26.)

The constitution of the Church, as it stands at present, consists of—

(1) Title.—"The branch of the United Church of England and Ireland in New Zealand" (which, however, is declared in the canons to be sufficiently referred to or designated as "The Church of the Province of New Zealand, commonly called the Church of England."

(2) Preamble.—Reciting the objects of Association by voluntary compact, the Conference of 1857, and the revision of the constitution in 1865.

(3) Fundamental provisions, which may not be altered, revoked, added to, or diminished. One of these is specified *infra* (p. 160), while the others are referred to *infra* (p. 166).

(4) Provisions not fundamental, which are alterable as specified *infra* (p. 162).

(5) Code of canons, which are the statutes and resolutions passed in General Synod and alterable at any session of that synod.

The Primate in his address to the General Assembly (1904)—

(1) Speaks of the Assembly as sacrosanct though not composed any more than was the Architypal Council of Clergy alone;

(2) Points out that the apostles and presbyters did not regard the synodal conclusions as being less the dictates of the Holy Spirit because the brethren representing the general membership of the Church were united with them in action, nor did the apparent secularity and triviality of some of the matters with which they had to deal lead them to imagine that nothing more was

needed than human sagacity for the settlement of their troubles or the promulgation of their rules;

(3) Declares that the scrutiny of accounts or the amendment of a canon, if such work be conducive to the well-ordering of the Church, is just as much a sacred work as was God's care in the formation of our bodies to be the instruments of our souls and the protection of our spirits;

(4) Talks of the 1870's as the time when "we fought the battle of our inherent freedom." Then "we established our Catholic position and gained acceptance for our distinctive name with the descriptive sentence appended for the purpose of witnessing to continuity, and so procuring our rights in matters of discipline or property";

(5) Contends that this Church is not a branch of the Church of England in New Zealand. This description of her in the fundamental provisions is a fundamental mistake. "It is only in the case of sects that origin gives name and dependence, and to call ourselves a branch in that sense of the Church of some other land is to deny our catholicity";

(6) Observes as to the effect of a change in rights of property that if an application to the Legislature becomes necessary, "we must take great care to guard against all possibility of seeming to derive our authority from the Legislature."

The great idea has been to get all the property held by the General Synod.

In the "seventies" there were—

(1) the Church Missionary Society;

(2) the Diocese of Christchurch holding the Canterbury block;

(3) the Bishop of New Zealand as corporation sole with 1,400 acres of land ultimately transferred to the General Synod.

The General Synod

(in which all the seven dioceses are equally represented).

Unlike the Church in Australia, the dioceses are organised on a uniform system in subordination to the General Synod, which consists of three distinct orders—bishops, clergy, and laity. The consent of all (through a majority of such order) to the acts of synod is necessary. This is a fundamental rule. Meets triennially.

Representation by dioceses. Communicant and full age qualification. At present there are three clerical and four lay representatives from each diocese. The latter are elected by the parochial electors voting in local groups (archdeaconries or otherwise).

Diocesan Synods are similarly constituted, and are to exercise all powers necessary for the order and good government of the Church in the diocese, subject always to the general control of the General Synod. (Further as to Diocesan Synods, see *infra*, p. 163.)

Stated Functions and Powers of General Synod.

1. To fix the standard of qualification for membership in the General and Diocesan Synod, and to determine mode of registration.

2. To determine how and by whom all patronage shall be exercised.

3. To make all regulations necessary for the order, good government, and efficiency of the Church, including such as relate to trust property and officers and conditions of tenure and appointment. Every office-bearer (clerical or lay) is as a condition to admission to office under the authority of the General Synod, and as a condition of title to income or emolument out of property held under the synod required to sign a declaration of adhesion to its authority; this declaration contains an undertaking to resign office whenever called upon to do so by the synod or anyone acting under its authority.

4. To depose all clergy and office-bearers (subject to decision of any tribunals which may have been constituted unless under the terms of appointment the jurisdiction shall not apply).

5. To establish tribunals on questions of doctrine and discipline and (at option) courts of appeal.

6. To delegate powers to any synod, board, or commission, and to associate with itself missionary dioceses. There is a standing commission of five, which interprets canons and statutes and resolves doubts, and hears appeals against proceedings of Diocesan Synods.

7. To act as a tribunal of appeal (or constitutes it) from a Diocesan Synod, and otherwise controls it. Any regulation within the constitution assented to by all the Diocesan Synods with a view to its acquiring the force of a regulation of the General Synod is effective as such. It can control, alter, repeal, and supersede any regulation made in the Diocesan Synod.

8. To confirm or sanction the election or appointment of bishops, who are nominated by the Diocesan Synod, and must on nomination assent (in writing) to the constitution. If the General Synod

be not in session when this sanction is required, it is given by the majority of the standing committees of the several dioceses.

9. To alter, amend, and repeal other than fundamental provisions subject to prior notification to the several Diocesan Synods.

10. To appoint trustees, and otherwise act as regards trust property. To constitute and control the Maori Mission Board.

11. To elect the primate (in which case more than one-half of the votes of each order is required, and if after three successive ballots no such majority is procured, then the senior bishop is to be primate).

12. To create new dioceses, and alter boundaries of dioceses with the consent of the Diocesan Synods concerned.

The Code of Canons.

These are ranged under seven titles (A—G inclusive) :—

Title A (Canons I. and II.) relates to—

(1) Bishops and their appointment and resignation.

(2) Pastors and their appointment. This "Trust of selecting a clergman and nominating him to the bishop for institution to the cure" is exercised in manner specified *infra* (p. 164) and a sentence against him is equivalent to an arbitration award, which may be made a rule of the Supreme (Civil) Court of New Zealand. (Report of the Ecclesiastical Courts Commission, p. xiii.)

Title B (Canons I.-VII.) relates to the details of the constitutions of the organised bodies of the Church. The General Diocesan Synods, the local boards and native Church and Maori missions, also cathedral chapters (in which the bishop is supreme), and parishes, the boundaries, &c., of which can be altered by the Diocesan Synod.

Title C (Canons I.-IV.) relates to ecclesiastical legislation; enactment, &c., of canons; standing commissions.

Title D (Canons I.-III.) relates to ecclesiastical courts and procedure; bishop's court; provincial court (composed of at least three bishops, with two or three lay assessors to assist with advice); ecclesiastical offences; trial of bishop.

Title E (Canons I. and II.) relates to educational institutions.

Title F (Canons I. and III.) relates to trustees; commissions and powers of trustee boards; incorporation; duties.

Title G (Canons I. and II.) miscellaneous provisions; embodies the necessary alterations consequent on the disestablishment of the Irish Church, &c.

Provisional adoption of the new Table of Lessons, 1871.

Diocesan Synods. (Title B, Canon II., &c.)

1. Every Diocesan Synod consists of the bishop, licensed clergy, and not less than one synodsman for every parish or parochial district; also of such native synodsmen not exceeding two for each native Church board district of the diocese. Clergy holding "permission to officiate" have a seat and right of speech in synod, but no right to vote. Clergy holding neither licence nor permission may sit in synod with its permission, but may not speak or vote.

2. Every layman in the diocese may vote at the election of a synodsman for a parish or district, but only communicants can be synodsmen.

3. Every Diocesan Synod must meet once at least in every year; a quorum is constituted by the bishop, and not less than four clergy and seven synodsmen.

4. An act requires the separate assent of the bishop, a majority of the clergy, and a majority of the laity.

5. There is a standing committee of the diocese (not less than three clerical and five lay members of the synod).

6. The synod can constitute archdeaconry and rural deanery boards and native church boards.

7. The synod can constitute districts into parishes and alter boundaries of parishes subject to appeal.

Miscellaneous.

(A) *The Cathedral Chapter.*—Comprises laymen (in Christchurch Diocese, four) as well as dean and canons. The bishop appoints dean, canons, and lay members. The dean is appointed with the concurrence in the case of the first appointment of the Diocesan Synod, and subsequently of the chapter and standing committee of the diocese. Until a dean is appointed, the functions of the dean are performed by the bishop.

In the case of the canons and lay members, one half are nominated in the Diocesan Synod on the first appointment, and are subsequently appointed by the chapter and standing committee acting together at a meeting convened for the purpose.

The Diocesan Synod may enact statutes for the regulation of the cathedral chapter. Those enacted for the Diocese of Christchurch

provide that the bishop presides when present, and can use the cathedral as he desires in connexion with his office. He orders and controls the services; the chapter co-operates with him for diocesan purposes; the dean looks after the fabric and furniture. The bishop and the dean act together in appointing, &c., the minor canons, who can be summarily dismissed if the bishop and the dean and chapter act conjointly in so decreeing.

(B) *Diocesan Trust Boards.*—Five of the dioceses have these. They consist of the bishop, who is chairman, and the standing committee of the diocese for the time being. (Title F.) It holds any property in the diocese on behalf of the General Synod. They can be incorporated with the consent of the Diocesan Synod.

(C) *Appointment to Cures.*—There is in each diocese a board of nomination, consisting of the bishop (*ex officio*) and two other members of the diocese, the one a clergyman in priest's orders, holding the bishop's licence, the other a communicant layman resident in the diocese, both elected, the clergyman by the clerical and the layman by the lay members of the Diocesan Synod. If the members of the Diocesan Synod fail to elect a member or members to the board of nomination the members of the standing committee of the diocese elect such member or members, the clerical members of it electing the clerical member and the lay members electing the lay member. The bishop is convener and chairman of the board, and every question is decided by a majority of its members. On the occurrence of a vacancy in the cure of a parish, the bishop, where practicable, and if satisfied that there are sufficient means available for the vicar's stipend, arranges a conference between the board and the vestry of that parish to consider the filling of such vacancy. After the conference the board nominates to the vestry not more than three clergymen to fill the vacancy, and the vestry either accepts or selects one of these or the one nominee, if but one be nominated, within three months after the nomination. In default of action on the part of the vestry, there is lapse to the board, which, however, may not select any nominee rejected by the vestry.

The bishop may decline to institute a clergyman thus nominated and accepted or selected, and if so must give notice to that effect to the board, and also communicate his reasons to the clergyman in question. Both the board and the rejected clergyman may appeal to the bench of bishops of the province against such rejection, and if two-thirds of the members of the bench disagree with the bishop's decision, institution is to be given.

The board of nomination, with the consent of the vestry, may delegate the power of selection. The Diocesan Synod may vest the right of *first* presentation in a private benefactor.

(This method of appointment has not been in force for more than two years, and is still on its trial.)

(D) *Churchwardens and Vestrymen.*—These must be communicants. One of the wardens is appointed by the minister. There must be at least three and not more than ten vestrymen, all of whom must be communicants.

(E) *Dilapidations* (Diocese of Canterbury, New Zealand):—

The incumbent is declared responsible for repairs in Schedule A;

The parishioners are declared responsible for repairs in Schedule B.

(F) *A Guarantee Fund* (Diocese of Christchurch, New Zealand) is constituted for the supply of clergy from England.

(G) *Lay Qualification for Franchise.*—Declaration of Church membership subject to registration for two months preceding a challenge, and full age and local residence. Restriction to males. A copy of the register is annually sent to the standing committee of the diocese.

(H) *Exchange of Cures.*—Can only be effected by the bishop or bishops with the consent of the incumbents concerned, and of two-thirds of the nominators for the parishes concerned.

(I) *Incompetence of Incumbent.*—The bishop may appoint a commission of inquiry (one clergyman and two laymen) from the assessors of the bishop's court in any case of unfitness through age, infirmity, or other cause not relating to doctrine or ritual, or any cause specified in Title D, Canon II. If they report that circumstances exist which render removal expedient, the incumbent must go if so required by the bishop.

(J) *Keys of the Church.*—The minister has possession of them but when the church is required for service other than parochial to be performed by the bishop's authority, the minister must allow it to be opened for this purpose.

Ecclesiastical Courts. (Title D.)

1. *The Bishop's Court.*—Exercises jurisdiction under the authority of the General Synod on all matters relating to doctrine, breach of regulations, canons, and statutes, and to the behaviour of and performance of duties of and by a minister or office-bearer.

The chancellor appointed by the bishop tries questions of fact. The bishop also appoints a church advocate of the diocese to conduct proceedings. Six clergy and six laity are appointed by the bishop with the concurrence of a majority of both orders in Diocesan Synod as assessors who hold office for three years.

The methods of procedure before and after trial are fully set out in Title D, Canon I.

2. *The Court of Appeal.*—Consists of the bishops of the province, of whom at least three are to be present at a hearing. They may appoint assessors. This court may also exercise original jurisdiction by the issue of letters of request.*

3. *Trial of a Bishop.*—The primate on accusation issues a commission to the chancellors of any two of the dioceses of the province other than the diocese of the bishop accused for inquiry and report, and if a *prima facie* case is found, the primate cites accused before a court composed of at least three bishops of the province and assisted by one or more legal assessors. The judgment must be concurred in by at least three bishops, and be signed by the primate. It is final.

Relation to the Church in England and other Branches of the Anglican Church.

This branch of the Anglican Church carries no appeals out of the country and submits herself to no external tribunal of reference. In her constitution she declares, among its fundamental provisions, which are unalterable, that she is a branch of the Church of England, and maintains the doctrine and sacraments of Christ as the Lord has commanded in His Holy Word, and as the Church of England has received and explained the same in the Common Prayer Book, Ordinal, and Articles. She precludes the General Synod from altering the authorised version of the Bible or the above-named formularies, but this is not to prevent it from accepting any such alterations as may be adopted in England with the assent of the Crown and Convocation, or framing new, or modifying existing, rules (not affecting doctrine) to meet local requirements under direct licence from the Crown. Moreover, if new Zealand becomes independent of the State or the Home Church is disestablished, the General Synod is to have full power to alter articles, services, and ceremonies as altered circumstances may require, and also to alter the authorised version of the Bible.

* (*a*) Judgments have the same force as an award made in any reference to arbitration by consent, and may be made a rule of the Crown's Supreme Court of New Zealand.

(*b*) Ecclesiastical offences thus triable and their punishments are set out in Title D, Canon II.

THE CHURCH OF THE PROVINCE OF SOUTH AFRICA.

(Otherwise known as the Church of England, or the English Church, or the Church of the Anglican Communion in these parts.) *

The first South African See (Cape Town) was created after the constitution of the Colonial Bishoprics Fund in 1841 by letters patent issued in 1847, and purporting to confer ordinary visitatorial jurisdiction on the bishop, to constitute him a corporation sole with power to acquire land, and to subject him to the metropolitical jurisdiction of the Archbishop of Canterbury.

In 1853 (the Cape Colony having become self-governing) further letters patent were issued for the division of the original diocese into three, and the consequent constitution of the three Dioceses of Cape Town, Grahamstown, and Natal, with Cape Town as the Metropolitan See.

Then arose the big question (which assumed grave dimensions when the metropolitan purported to depose the Bishop of Natal (Colenso) for heresy) as to the extent of the validity of letters patent issued by the sole authority of the Crown as regards sees created in self-governing dimensions. It was on this decided that—

(1) The Crown can of its own authority by letters patent create a legal see and confer a legal status on its bishop, so that he can perform the functions of his office as enumerated in the letters patent, and become a corporation sole, and have a legal right to receive the income of his see. (See Article XXXVII. of the XXXIX. Articles.) But the diocese is not a legal diocese, and the bishop cannot exercise coercive (but only consensual) jurisdiction. The daughter Church does not thus become a part of the Established Church of England. (*Reg.* v. *Eton College*, 1857, 8 E. and B., 610; *Long* v. *Bishop of Cape Town*, 1863, 1 Moore, P. C., n.s., 411; *Bishop of Natal* v. *Gladstone*, 1866, L. R., 3 Eq., 1.) The purely voluntary nature of the Church thus constituted was also formally declared by the Court of Natal in 1868 (*Bishop of Natal* v. *Green*, 18 L. T., 112), as well as by the Privy Council in England both as regards South Africa and Canada. (*Long* v. *Bishop of Cape Town*; *Brown* v. *Cure de Montreal*, 1874, L. R., 6 P. C., 157.)

* The alternative titles are used to express the fact of connection with other Churches of the Anglican Communion, and in particular the Church of England.

(2) The metropolitan of a province created under letters patent thus issued cannot merely by virtue of such letters patent depose a suffragan bishop. The Crown cannot of its own authority create any but a common law court. (*In re Bishop of Natal*, 1864; 3 Moore, P. C., n.s., 115.)

(3) The Church of England as by law established is not, in the absence of express legislation to that effect, part of the constitution in any Colonial settlement, and the settlers have never been disposed to make it so. (*Ibid.*)

In view of these decisions the practice of issuing letters patent for the creation of sees in the self-governing dominions has died out. No more were regularly issued after 1866. And even where, as in the case of places falling within the British Settlements Act, 1887, and in that of conquered or ceded colonies, sees may well be still created by the sole authority of the Crown through issue of letters patent, none such would be issued so as to confer coercive jurisdiction. At the same time there is nothing to prevent—

(*a*) any branch of the Church in the self-governing dominions from providing that its bishops take the oath of due obedience to the Archbishop of Canterbury, though this does not give them place in Convocation, or make their sees part of the Province of Canterbury;

(*b*) an archbishop or bishop of the Established Church here from consecrating a bishop for service in a branch of the Church abroad, though he must procure licence from the Crown in this behalf.

A bishop thus consecrated can also, on taking the oaths of allegiance and supremacy to the Crown, and of due obedience to the Archbishop of Canterbury, perform episcopal functions as a bishop of the Church of England in all parts of the world though he has no legal jurisdiction.

Thus the Church in South Africa was thrown on its own resources, free to make its own arrangements as a purely voluntary society. Dr. Colenso adhered to his position (see (1) *supra*); and Dr. Macrorie was consecrated Bishop of Maritzburg in 1869. Meanwhile the Dioceses of St. Helena and the Orange Free State (afterwards Bloemfontein) had been created (1859 and 1863).

In 1870 the first Provincial Synod was held, and the constitution and canons of the Church of the province were provisionally adopted (the action of the Diocesan Synods being already by that time established).

The adoption was preceded by a Declaration of Fundamental Principles, whereby (*inter alia*) the doctrine, sacraments, and discipline of Christ were received as set forth in the standards of

faith and doctrine of the Church of England, and the right to alter the same was disclaimed.

The English Book of Common Prayer and the Ordinal were likewise received, and the English version of the Bible as appointed to be read in churches was accepted.

But there were three provisos to this declaration:—

(1) The Church of the province was not to be prevented from accepting any alteration in the formularies (other than the Creeds) adopted by the Church of England, or allowed by any General Synod or assembly of the Anglican Communion, or from making such adaptations and abridgments of or additions to the services of the Church as might be required by the circumstances of the province.

(2) All changes in and additions to the services made by the Church of the province were to be liable to revision by any General Synod of the Anglican Communion to which the province should be invited to send representatives.

(3) In the interpretation of the standards and formularies the Church of the province was not to be held bound by decisions in questions of faith and doctrine, or in questions of discipline relating to faith or doctrine other than those of her own ecclesiastical tribunals, or of such other tribunal as might be accepted by her Provincial Synod as a tribunal of appeal.

The constitution, which is in accordance with the careful reports of committees appointed by the Lambeth Conference in 1867 on the best arrangements for holding synods, constituting Church tribunals, electing bishops, and organising provinces in the branches of the Anglican Communion, and after careful study of the decisions of the Judicial Committee of Privy Council, was ratified in 1876, and has not been materially altered since.

The third proviso was debated upon at length in the Provincial Synod of 1883, when the metropolitan pressed strongly for its maintenance (saying that he had been advised to do so by all the prelates whom he had consulted in England) pending a possible future revision of the final tribunal of ecclesiastical appeal in England.

The Representation of the Laity.

Without questioning the right of the bishops or of the bishops and clergy to meet in synod by themselves, or the rightful authority of the episcopate in matters of faith and doctrine, and without affirming that the presence of others is essential to a

Provincial Synod, yet inasmuch as no rules for the government of the entire Church should be enacted without the consent, express or implied, of the whole body of the Church, it is judged expedient that the laity of every diocese be invited to send representatives (communicants) to its Provincial Synod in order that the counsel of lay members of the Church may be had with regard to all such rules or canons, and that the consent of the laity may be obtained to the same through their representatives.

The Provincial Synod.

(*The 7th Provincial Synod was held in* 1909.)

This is declared to be subordinate to the higher authority of a General Synod of the Churches of the Anglican Communion, to which the province may be invited to send representatives, and to have full power and authority to make all regulations requisite for the order, good government, and efficiency of the Church of the province. Any act of a Diocesan Synod is liable to review in the Provincial Synod. It meets every five years on archiepiscopal summons.

Composition.

(1) *House of Bishops.*—Composed of all the bishops of the province.

(2) *House of Representatives.*—Clerical and lay (the latter lay communicants of full age who have received the Holy Communion three times at least during the preceding year at the hands of a clergyman of the Church of the province or a Church in communion with it), and the electors of these lay representatives must themselves be communicants of full age.

A majority of each order is necessary if voting by orders is required. Any member of the synod may require a vote by orders. In that case the laity vote first.

Stated Functions and Powers.

1. To make the alterations in the services required by the circumstances of the province, all such to be confirmed in a subsequent Provincial Synod as being consistent with the spirit and teaching of the Common Prayer Book.

2. To frame rules for ecclesiastical discipline and to determine the constitution and rules of procedure of diocesan tribunals.

3. To provide a provincial tribunal of appeal. (Bishop to be tried by con-provincial bishops.)

4. To create new dioceses and alter diocesan bounds.

5. To incorporate missionary and other dioceses in the Church of the province.

6. To procure from a new bishop his declaration of assent to the laws of the Church of the province in the prescribed form.

7. To frame regulations—

(*a*) for the management of property held in trust for the Church of the province (save and except the properties in the Dioceses of Cape Town and Grahamstown orginally acquired), and to determine, where possible, the manner in and the conditions on which such property shall be used or occupied, how and by whom patronage shall be exercised, the duties of parochial officers, and the rights of parishioners in Church matters;

(*b*) as regards the division and boundaries of parishes, and other such questions.

Also to appoint trustees (who have powers of sale, &c.).

8. To delegate powers of management of property to any synod, board, committee, or other body.

9. To make canons, rules, regulations, and by-laws.

The Canons.

These are arranged in eight chapters:—

Chapter I. (1 Canon).—Deals with the details relating to the Provincial Synod. Each diocese is entitled to send as its representatives one priest and one layman for every ten (or fraction of ten) clergy holding any cure or public office, with the sanction of the bishop, in the church of that diocese. The representatives are elected under diocesan arrangements. A missionary bishop may bring with him one priest and one layman. Every bishop of the province may bring with him a deacon either chosen by fellow-deacons or selected by the bishop. Deacons may speak, but not vote. All acts of the Provincial Synod are provisional unless three bishops and one-third of the clerical and one-third of the lay representatives are present.

Chapter II. (16 Canons).—Deals (*inter alia*) with the functions of the metropolitan and the dean of the province; the election of the archbishop and bishops; the episcopal veto in the Diocesan

Synod; coadjutor bishops; declarations and subscriptions by bishops and clergy; deacons and minor offices.*

Chapter III. (2 Canons).—Deals with the formation of dioceses and with vacant sees.

Chapter IV. (7 Canons).—Deals with the formation of new parishes, presentation, and institution. Residence of clergy, vestries, church officers, &c.

Chapter V. (2 Canons).—Relates to the services of the Church and holy matrimony.

Chapter VI. (6 Canons).—Relates to discipline. (Preliminary proceedings, trials, appeals, and sentences.) Bishops and clergy can be tried for crime or immorality, heresy or false doctrine, violation of any law or canon of the Church of the province, wilful contravention of the rules and regulations of Provincial Synod or Diocesan Synod, neglect of the duties of his office, or conduct giving just cause for scandal or offence.

(1) At a trial of a bishop at least three bishops, including the metropolitan, must be present, with three clerical assessors (of the rank of dean, archdeacon, and canon, and two lay assessors (communicants)). A charge against the metropolitan, on grounds other than immorality or his conduct as diocesan bishop, is to be referred, with finding as to facts, which is to be conclusive, to the Archbishop of Canterbury, who may pass sentence, with the aid of at least four other bishops. If the archbishop is unable or unwilling to hear it, the cause reverts to the bishops of the province. In proceedings against a bishop relating to matters of faith and doctrine, an appeal is allowed to the Tribunal of Reference, recommended in Report II. of the Lambeth Conference of 1867. There is also in such matters a rehearing or review if three metropolitans of the Anglican Communion require it.

* There was a new canon passed in the 1909 synod as to assistant bishops.

As to the archbishop, if in the last resort the bishops of the province do not within twenty-eight days accept the selection† of the elective assembly of the Diocese of Cape Town (a deputation of which may consult with the Episcopal Synod at any time), the choice is delegated to the Archbishop of Canterbury and four other bishops of the Anglican Communion resident in Great Britain, two appointed by the bishops of the province, and two appointed by the elective assembly. The canons indicate a disposition to favour the consecration of the metropolitan, by or under the commission of the Archbishop of Canterbury.

† This selection of the elective assembly of the Diocese of Cape Town represents the votes of at least two-thirds of the clergy in priests' orders assented to by more than one-third of the laity.

(2) As to clergy tried in the Diocesan Tribunal there is an appeal to the Provincial Tribunal of Appeal, consisting, as regards matters of doctrine, of the metropolitan, or some other bishops commissioned by him in the case of an appeal from the Cape Town Diocese, and, at least, two other bishops, with three clerical assessors, as above, and one or two lay assessors; and as regards other matters (as a rule) of the metropolitan alone, or some other bishop commissioned by him, with assessors as above. There is no appeal merely as regards facts unless the metropolitan directs a review, and appeals from trifling sentences are restricted.

Until the Tribunal of Reference mentioned above shall be constituted, any party to a suit involving questions of faith and doctrine may require the whole case to be submitted to the Consultative Body constituted in pursuance of Resolution 5 of the Lambeth Conference of 1897. The Consultative Body does not then pass sentence; but the ultimate sentence is that of the court of the province, and such sentence is to be in accordance with the advice tendered to it by the Consultative Body.

Chapter VII. (1 Canon).—Relates to property. The constitution of Provincial and Diocesan Trust Boards.

Chapter VIII. (2 Canons).—Deals with the proposed alterations of canons and the interpretation of canons.

Resolutions.

In addition to the 37 canons there are 26 original resolutions. One expresses the desire that the Archbishop of Canterbury shall be primate of primates and metropolitans; another declares that the metropolitan of that province should not take the oath of canonical obedience to another metropolitan; another expresses the opinion that metropolitans, and especially the metropolitan of that province, should bear the title of archbishop.

The title of archbishop was eventually assumed as the result of the Lambeth Conference, 1897.

Diocesan Synods.

The Diocesan Synod is to resemble as far as possible the Provincial Synod in point of constitution and procedure. (Article VIII. of Constitution.)

No regulation of the Diocesan Synod is effective if contrary to or in conflict with an enactment of the Provincial Synod. (Article IX., *ibid.*)

Each Diocesan Synod is entitled to define the qualifications of the electors of its lay members.

The Diocesan Synod is left free to dispose of matters of local interest and to manage the affairs of the diocese.

Any Act of Diocesan Synod is liable to review in the Provincial Synod which alone makes canons. (*Ibid.*)

The Diocesan Synod meets at least triennially, and in some cases annually.

The bishop is elected by the clergy of the diocese with the assent of representatives of the laity in an elective assembly specially summoned for that purpose under the metropolitan's mandate. For the purposes of such election one-half of both clergy and lay representatives must be present.

All the priests of the diocese have a vote. One representative deacon has a vote for all.

The laity, who must be communicants (*i.e.*, have communicated at least three times during the preceding year) chosen by communicants, are appointed under diocesan arrangements. In lieu of electing themselves the assembly may, with the approval of the bishops, delegate the power of selection to another body or person. There is lapse to the bishops of the province. In all cases there is confirmation (subject to objections on canonical grounds) by the con-provincial bishops.

Bishops of a diocese in which there are less than six clergy (priests) are (with the missionary bishops) appointed by the bishops of the province.

The following paragraphs refer only to the Diocese of Cape Town. The constitution of the synod of the diocese contains a declaration of principles and resolutions as to its status. It disclaims all the functions of coercive jurisdiction. It accepts the position assigned to it by the Judicial Committee of the Privy Council (*Long* v. *Bishop of Cape Town*) as a voluntary religious association not established by law.*

Parishioners entitled to vote for lay representatives comprise all adult *males* not being under Church censure who are on the list of communicants or (until otherwise determined) who, being baptized and not being members of any other religious body, are habitual worshippers in the parish or district church or chapel in respect of which the vote is claimed.

The synod recognises that the appointment to cures rests with the bishop, but considers that no clergyman resident in the diocese should be appointed against the express wishes of a majority of the resident communicants. The method of institution as rector

* A similar position is taken by the Provincial Synod in the note at the end of Canon XXIX., which states "By the word 'court,' as used in this and other canons, is meant a tribunal of this Church having such jurisdiction as can be claimed by, and may be exercised in, a voluntary association upon the footing of mutual contract or agreement."

is accepted. There is a diocesan finance commission consisting of the members of the diocesan board of trustees, with the diocesan secretary, and four clergymen, and eight laymen appointed by the synod. The bishop presides.

No parish or district, unless of a missionary character, is regarded as entitled to the services of a resident priest which does not contribute at least £100 a year to his support, nor to a deacon without contributing £60 a year.

As to dilapidations, the cost, in default of special arrangement, is borne jointly by the income of the incumbent and the parish or congregation.

Parochial Administration.

There are churchwardens and sidesmen (communicants of full age) elected by the adult *male* parishioners, communicants, or regular worshippers. They manage, in conjunction with the minister, the local church property subject to the control of the Diocesan Trust Board. The wardens look after the residence of the minister as well as the glebe. Church membership is not ascertained by personal declaration. In some dioceses communicants of full age alone can be voters, in others the franchise is extended to those of full age who are baptized persons and not members of any other religious body, and are habitual worshippers. Females are excluded from the franchise, and so are those who are under ecclesiastical censure. (See Canon xxiii. of Provincial Synod.)

General Legal Position.

1. This Church is not, as in the case of the Church in Australia and Tasmania, a part of the Church of England, though it is in communion with it, as was evidenced in particular when the spiritual validity of the metropolitan's sentence on Dr. Colenso was upheld by the Church of England in Convocation, by the Episcopal Church in America, and throughout the Anglican Communion. She has, however, expressly precluded the application of the decisions of the Judicial Committee of the Privy Council relating to the interpretation, in questions of faith and doctrine, or of discipline relating to faith and doctrine, of the standards and formularies of the Church of England, which decisions, it was asserted, form part of the constitution of the Church of England as by law established; so that there is a different standard in England from what there is under the constitution of the province of South Africa. It follows that this Church was held not to be entitled to property held in trust exclusively for the purposes of the Church of England, or "dedicated to ecclesiastical purposes in connexion with the Church of England as by law

established and for no other purposes." (*Merriman* v. *Williams*, 1882, 7 A. C., 484.) (See, too, *Ex parte White in re Trinity Church Trust*, 1886, 4 S. C., 174, where the secular court in South Africa decided in connexion with the administration of a church trust whether the bishop had abused his legal powers.) Two things, however, should be noted:—

(1)—(*a*) Other Colonial Churches have *selected* and specified what particulars standards and formularies of the Church of England they adopt, and among these obviously do not select and specify the decisions of the judicial committee.

(*b*) The Church of South Africa accepted *en bloc* the standards and formularies of the Church of England, only guarding itself against the supposition that this acceptance might involve the acceptance of the decisions of extraneous courts in matters of faith and doctrine.

(2) The assertion was "the standards of faith and doctrine adopted by that Church (viz., the Church of England) are to be found not only in the texts. They are also to be found in the interpretation which those texts have from time to time received at the hands of the tribunals by law appointed to declare and administer the law of the Church." And again: "There is not that identity in standards of faith and doctrine which appears to their lordships necessary to establish the connexion required by the trusts. . . . . There are different standards on important points. In England the standard is the formularies of the Church as judicially interpreted. In South Africa it is the formularies as they may be construed without the interpretation." (Judgment in *Merriman* v. *Williams*, 1882.)

This assertion about the Church of England was not only characterised by Dr. Tait in 1882 as "monstrous," and ridiculed by Mr. Gladstone in 1891 (speech of June 19, at Jubilee of Colonial Bishoprics Fund), but was discredited by the remarks of Lord Halsbury (then Sir H. S. Giffard), sitting as President of the Judicial Committee itself in the "Lincoln" case. (See *Guardian*, July 8, 1891, p. 1150.) It is, therefore, of very doubtful legal authority at the present day.

2. Statutory authority has been procured for the repeal of ordinances of 1829-1846 affecting parishes—such ordinances not being altogether in agreement with the laws of the Church of England as by law established, and as administered in England in the conduct and management of vestry meetings and other

parochial business, nor in accordance with the position of a voluntary religious body. (English Church Ordinance Repeal Act, 1891.)

3. The statutory law of South Africa recognises all religious bodies alike as equally entitled to real property in the person of representative holders of it, and enables the secular courts to appoint new trustees and regulate the future appointment of them. (Companies Trustees Act (Cape of Good Hope), 1873, No. 3.)

4. In the special case of Natal, the Church properties originally vested in Dr. Colenso as registered properties in trust, were by the Act of 1910, No. 9—the succession in law having failed on Dr. Colenso's death—vested in new trustees, of whom the present bishop and his successors is to be one, for the use and benefit of the Anglican Communion in the colony of Natal, whether known as the Church of England, or the English Church, or the Church of the Province of South Africa, subject to the observance and fulfilment of any special conditions contained in the grants and deeds of transfer of any of the said properties in so far as the same were not in conflict with any of the provisions of the Act. Thus:—

(*a*) The vestries of certain specified Churches are accorded a veto in the appointment of ministers.

(*b*) For the conduct of services in those Churches, nothing is to be required which cannot be required in the Established Church of England.

(*c*) No statement of doctrine is to be required from ministers of those Churches which cannot be required in the Established Church of England.

Further as to Relations to the Church in England and other Branches of the Anglican Communion.

The desire of this Church (repeatedly asserted in synod) is for the closest possible connexion with the Mother Church—full communion, spiritual union—but not for subservience to "the accidents of her established condition." (See *supra.*)*

This Church is as yet the only branch of the Anglican Communion which resorts to the Central Consultative Body of the Lambeth province as a Tribunal of Appeal.

* In 1873 an important declaration was made in Episcopal Synod that no archbishop or metropolitan of a province ought to be required to take a suffragan's oath, no legal safeguard being thereby provided against departure from the doctrine of the Church of England, conformity with which is effectually secured by the terms of the constitution of the province by which every bishop is consensually bound. At the same time the honour due to that primate, and the

THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA.

Before the Declaration of American Independence the Church had been nominally under the supervision of the Bishop of London, who ordained clergy for service there and sent out commissions from time to time. The Declaration of Independence required the formation of an independent branch of the Anglican Communion. In 1784 Bishop Seabury was consecrated as the first indigenous bishop by the Bishop of Aberdeen, assisted by the Bishops of Moray and Ross, the Archbishop of Canterbury being then precluded from consecrating without administering the oaths of allegiance and supremacy to the British Crown. Facsimiles of the bishop's letter of consecration and of the *concordat* between the Scotch bishops and himself have been published by the Historical Club of the Church of America. Subsequently (this disability having been removed by legislation (26 Geo. III., c. 84)), three American bishops were consecrated at Lambeth. Since then American bishops have been consecrated without exception in America.

General Legal Position.

1. This Church is a voluntary association pure and simple, recognised by the State as in the case of all other religious bodies to the extent of its consistency with the law of the land and public policy.

2. All places of religious worship are exempt from taxation.

3. The confession of faith and the constitution adopted by the Church (*infra*) embody the terms of the contractual relationship of the members of the Church.

4. The powers of altering or amending the constitution depend on the powers in that behalf contained in the instrument of constitution.

reverence and affection owed to the most ancient and venerable archiepiscopal throne of Canterbury is unreservedly acknowledged, though reference is made to the fact that it has not as yet been constituted a patriarchate by any legislative enactment either of Church or State.

With the full consent of the Archbishop of Canterbury (Dr. Tait), Dr. Jones, on becoming metropolitan of the province, took the oath in a qualified sense to the extent of acknowledging the Archbishop of Canterbury's place in honour, but not his jurisdiction, except so far as it might be recognised in the constitutional canons of the Church of the province. Less than three months later the Colonial Clergy Act (37 & 38 Vict., c. 77, s. 12) did away with the legal necessity for any oath to an Archbishop of Canterbury or York at the consecration of a bishop for any see outside England.

5. The civil courts will interfere to prevent or correct abuses of trust amounting to perversion, and to construe and enforce trusts and contracts. No matters of Church polity are, as a rule, within the ken of these courts.*

6. Parochial boundaries not settled by the Church's authority are the town or village limits fixed by the civil law. (Canon 53.)

The Constitution.

This was adopted in General Convention, held in Philadelphia in October, 1789 (after earlier conventions held in 1785 and 1786), consequent on the severance from the mother Church of England by the change in the political condition of the State, or, in other words, this Church's independence of all foreign authority, civil and ecclesiastical.

The constitution is concisely framed in eleven articles, with canons annexed. It was revised in 1898, but without the introduction of any material changes. The last edition of the constitution and canons was adopted in the General Convention of 1913.

Conventions and Assemblies.

I. *The General Convention.*—Meets triennially. Special meetings on the requisition, or with the consent, of a majority of the bishops. Bishop senior by consecration is presiding bishop. (There are no archbishops nor titular "dignities"—no gaiters or aprons.)

Composition.

These Houses are strictly co-ordinate.

(1) *House of Bishops.* — Diocesan and Missionary.

(2) *House of Clerical and Lay Deputies.*— Representing the several dioceses.

The representation consists, for each diocese, of not more than four clergymen and four laymen (communicants), and both clergy and laity must be residents in the diocese. The former must be canonically resident.

* "Where there is no right of property involved, except clerical office or salary, the spiritual court is the exclusive judge of its own jurisdiction." "We have no right, and, therefore, will not exercise the power, to dictate ecclesiastical law. We do not aspire to become *de facto* heads of the Church, and, by construction or otherwise, abrogate its laws and canons." "The Church should guard its own fold; enact and construct its own laws; enforce it own discipline; and thus will be maintained the boundary between spiritual and temporal power." —(*Chase* v. *Cheny* (1871), Ecclesiastical Courts Commission Report, 1883, p. 638.)

The clerical and lay deputies have perfectly equal rights and powers extending to matters relating to discipline, doctrine, and worship.

An Act of Convention requires a majority in each House and of each order (voting separately) in the House of Deputies.

If voting by orders is required by a clerical or lay representative of any diocese, and when a vote by orders is taken, each diocese has one vote in each order.

The majority of suffrages by dioceses is conclusive in each order.

Such majority, however, must comprehend a majority of the dioceses represented.

Every diocese, whether its deputies attend or not, is bound by the Acts of the Convention, which are authenticated by both Houses.

An Act of Convention involving a fundamental change (including an alteration in the Prayer Book) (see *infra*), passes through three stages:—

(*a*) Primary adoption by the General Convention.

(*b*) Notification to the several Diocesan Conventions.

(*c*) Final adoption by the General Convention.

Functions and Powers.

1. Can alter the constitution, the Common Prayer Book, Offices of the Church, Articles of Religion, and Ordinal, on conditions stated *supra*.

2. Concurs in the creation of new dioceses under the conditions prescribed by Article v. of the constitution on being satisfied of adequacy of endowment.

3. Provides the mode of trial of bishops, and Provincial Courts of Review for the trial of presbyters and deacons.

4.* Appoints all the missionary bishops, domestic and foreign (the House of Bishops choosing and the deputies confirming). (Canon 10.)

5.* Gives its fiat for the consecration of a bishop-elect.

6. Receives journals of the several dioceses and missionary districts, which are reported on collectively by a committee of deputies on the state of the Church to the House of Bishops. (Canon 49.)

* 4 and 5 apply to General Convention when in session. At other times another process is followed, the several standing committees assenting to the bishops' choice of a missionary bishop, and the standing committees and the bishops separately assenting to the election of a diocesan.

7. Triennially appoints a treasurer to receive and disburse all moneys collected under its authority. (Canon 48.)

8. Trienially appoints a board of missions for the management of the general missions, foreign and domestic, of the Church (the Provincial Synods electing some members); and receives reports from such board. (Canon 55.)

9. Alters, amends, and adds to the canons, such changes being certified at the close of the session by a committee on canons of each House. (Canon 59.)

II. *Diocesan Conventions.*—The Diocesan Convention meets annually, the bishop presiding, with voting, but often without vetoing, power.

It is composed of—

(1) Clergy: In some dioceses all the clergy canonically belonging to the diocese, in others with certain restrictions as to employment. (As a rule both presbyters and deacons.)

(2) Laity: Delegates from each congregation or parish. Less than half a dozen from each, and not in all dioceses communicants. There, too, clergy and laity have equal rights of voice and vote. Voting by orders generally prevails in matters of importance, and, as regards laity, voting by parishes where there is not a system of proportional representation.

No clergyman having a parish or cure in more than one diocese can sit in the convention of the diocese in which he does not canonically reside. (Canon 53.)

Functions.

1. Appoints its clerical and lay deputies to the General Convention.

2. Frames and varies its own constitutions and canons.

3. Elects the bishop under diocesan arrangements (laity always having a voice), and also the coadjutor or suffragan bishop when one is required agreeably to its own rules.*

4. Institutes the mode of trial of presbyters and deacons in diocesan courts.

* Consent, except in the case of permanent disability of the diocesan, to the election of a coadjutor bishop must be obtained from the bishops and standing committees.

5. Determines the qualifications of its own members, clerical and lay. In most cases membership is confined to communicants.

6. Appoints the Diocesan Standing Committee (of clergy and laity—though in Connecticut clergy only) required by the canons as a council of advice to the bishop, or to act as the ecclesiastical authority when there is no bishop. (Canon 51.)

7. Defines the boundaries of parishes and parochial cures, and forms new parishes, though this formation can be left to the bishop acting with the advice of the standing committee.

Parochial and Congregational Assemblies. (*Vestries.*)

Every congregation belongs only to the diocesan area within which its members dwell or within which there is a church to which they belong. (Canon 53.)

The parish meeting, which is constituted under diocesan arrangements [the parish may be incorporated, but not its assembly or meeting], is held annually at Easter. Its business includes the election of the lay officers, viz., the two wardens and a dozen or less vestrymen.

In some cases it appoints the diocesan lay deputies, in others these are elected by the vestry.

Stated Functions of Lay Officers.

1. In the case of parishes to "call" the rector or pastor and assistant minister (if any), after consultation with the bishop in each case, the bishop's power often being confined to advice and to vetoing the call of one who is not in good and regular standing. Acceptance of the call completes the contract between the pastor and parishioners or congregation.*

2. To exercise certain rights in connexion with the dismissal of the pastor and the assistant minister, subject to episcopal confirmation in each case.

3. In conjuction with the minister to answer inquiries of the bishop as to the state of the congregation. The rector is *ex officio* a member of the vestry and president at its meetings.

Lay Readers.

These are appointed and licensed by the bishop *mero motu* for service in a vacant parish, congregation, or mission, but otherwise on the request and recommendation of the incumbent. They must be communicants of the Church. (Canon 23.)

* The law of some of the States provides that the right of call may not be confined to communicants if the stipend is derived from pew rents or the general subscriptions of the congregation.

Tribunals.

1. *Trial of a Bishop.*—This may be at the instance of ten male communicants (of good standing), of whom two must be presbyters, six of the communicants and one of the presbyters belonging to the accused bishop's diocese. Charges grounded on false doctrine are presented by three bishops of the Church.

The charges, unless declared unworthy of consideration by a committee of bishops assembled by the presiding bishop, are delivered for preliminary inquiry to a board of five presbyters and five laymen not belonging to the diocese, and appointed by the presiding bishop. If the board decide that the trial shall proceed, the case is heard by a court of bishops chosen by each triennial General Convention.

From this court there is an appeal to a court of review, likewise chosen by the triennial General Convention, and in case of a condemnation for false doctrine the judgment must be affirmed by two-thirds of the House of Bishops.

A bishop also may in response to rumours, reports, or charges affecting his moral or religious character demand, with the consent of two brother bishops, the convention of a board of inquiry. (Canons 28-30.)

2. *Trial of a Minister.*—A minister is amenable for offences committed by him to his bishop, or, if there be no bishop, to the clerical members of the standing committee of the diocese.

The bishop is also himself to institute inquiry if a minister is accused of certain offences by public rumour.

Diocesan courts of first instance are established by each Diocesan Convention; courts of review in each province by the General Convention and the Provincial Synod.

None but a bishop may pronounce sentence of admonition, suspension, degradation, or deposition on bishop, priest, or deacon. (Article IX. of Constitution.)

3. *Regulations as to the Laity:—*

(*a*) Communicants removing from one place to another must take with them a certificate of their status to entitle them to be received as such elsewhere.

(*b*) Laity offending their brethren by wickedness of life are to be repelled from Holy Communion, and can only be restored by the bishop. (Canon XLI.)

Differences between Ministers and Congregations.

In the case of a parish a pastoral connexion may be severed with the consent of the rector, or on appeal to the decision of

the bishop. The bishop may ask the advice of the standing committee in deciding the question. (Canon 39.)

(The provisions of the canons of the Diocese of Long Island on this point are set out in the Report of the Ecclesiastical Courts Commission at pp. 587 and 634.)

Neglect of Minister.

If a minister from inability or other cause neglects to perform the regular services and refuses to consent to another minister officiating within his cure, the lay officers may, on proof of such neglect or refusal before the bishop or other diocesan authority, and with the consent of such authority, open the doors of their church to another minister. (Canon 16.)

Special Points in Canons.

1. One seeking Holy Orders must first apply to the bishop in whose diocese he resides, with recommendations from his pastor, for admission as a postulant. Later to become a candidate for Holy Orders he must apply to the Diocesan Standing Committee for a recommendation to the bishop, accompanying this application with testimonials of fitness from his pastor and the majority of the vestry, or from one presbyter and four responsible lay communicants. Similar recommendations are required before actual ordination.

(Generally a three-years candidature is required prior to ordination.) (Canons 1 to 8.)

2. There are special canons relating to ministers ordained in foreign countries by bishops in communion with this Church, and not in communion with it. (Canons 18 and 19.)

3. Every bishop is required to visit every parish and congregation within his diocese at least once in three years, and in case of refusal it is the duty of the rector, or minister, or vestry, to lay the matter before an Episcopal Council of Conciliation. (Canon 13.)

4. The bishop is required to report his official acts to the Diocesan Convention.

5. The offences for which a bishop or minister may be tried are—

(*a*) Crime or immorality;

(*b*) Holding and teaching publicly or privately and advisedly any doctrine contrary to that held by the Protestant Episcopal Church in the United States;

(*c*) Violation of the rubrics of the Book of Common Prayer;

(*d*) Violation of the constitution or canons of the General Convention;

(*e*) Violation of the constitution or canons of the diocese;

(*f*) Any act involving a breach of ordination vows;

(*g*) Habitual neglect of the exercise of his ministerial office, or of the worship of the Church;

(*h*) Conduct unbecoming a clergyman. (Canon 25.)

6. No minister may solemnize matrimony in any case where there is a divorced wife or husband of either party still living, save in the case of the innocent party in a divorce for adultery. (Canon 40.)

7. As to the organised bodies and officers of the Church—

(*a*) There are special provisions as to the organisation of new dioceses. (Canon 52.)

(*b*) There are special provisions as to the organisation and constitution of congregations in foreign lands. (Canon 53.)

8. The number, mode of election, and term of office of wardens and vestrymen, with the qualifications of voters is such as the state or diocesan law permits or requires. The vestry are, as a rule, the agents and legal representatives of the parish in all matters concerning its corporate property and the relations of the parish to its clergy. The rector when present presides in all the meetings of the vestry unless the law of the state or diocese otherwise provides.

9. In a few dioceses women are allowed to vote in parish meeting. In none are they admitted to Diocesan Convention. But in the Diocese of California, and perhaps one or two others, a House of Churchwomen has been formed alongside of the Diocesan Convention for counsel, but without any actual authority.

10. In an appendix are set out the rules of order for the conduct of business in the House of Bishops and in the House of Deputies.

Relation of the Church to the Church of England and other Branches of the Anglican Communion.

1. She has derived her complete order of bishops under the English and Scottish line of episcopacy. (See *supra.*)

2. She has adopted (*mutatis mutandis*)—

(*a*) The Book of Common Prayer and Administration of the Sacraments and other Rites and Ceremonies of the Church according to the use of the Church of England (last edition 1892); but there is no ornaments rubric, and the Athanasian Creed has no place.

(*b*) The XXXIX. Articles. (Omitting XXI.).

(*c*) The English Ordinal with forms of consecration of churches and chapels. No alterations or additions to these formularies may be made unless such be first proposed in General Council and then submitted to every Diocesan Council, and then adopted at the next ensuing General Council by a majority of the House of Bishops, and by a majority of each order in the House of Deputies. Candidates for ordination must be familiar with the Prayer Book.

3. Her bishops take part in the Lambeth Conferences.

DIOCESES AND MISSIONARY BISHOPRICS HOLDING MISSION FROM THE METROPOLITAN SEE OF CANTERBURY AND NOT COMPRISED IN ANY PROVINCE OF THE ANGLICAN COMMUNION.

These are based on the idea that the existence of episcopal jurisdiction in a missionary district is essential at the start, and the condition of the progress which will eventually enable the mission to ripen into a diocese. There are a number of such sees in the British Dominions and a number of them in foreign lands, including China and Japan. At the present moment there are altogether thirty-four, including Newfoundland and Bermuda (*supra*, p. 144).

Such sees can be created by the Established Church of England under the Bishops in Foreign Countries Act, 1841, whereby the Bishopric of Jerusalem in the East was constituted, and under the Colonial Clergy Act, 1874, sec. 12. In both these cases the oath of due obedience to the archbishop can be dispensed with, but the licence of the Crown for the consecration here is requisite.

(Missionary sees can also be created by the agency of any unestablished branch of the Anglican Communion without any legal authority whatever, and by that of the Church in India under a commission from the archbishop.)

As regards the Anglican Communion in China (including Hongkong) and Japan, the English, American, and Canadian Missions have joined hands.

I. *China.*—There is a General Synod, called Chung Hua Skeng Kung Hui, of the Church in the eleven dioceses and missionary districts so far founded from England, or America, or Canada.

The preamble of the constitution contains a declaration—

(1) Accepting the Holy Scriptures of the Old and New Testaments as containing all things necessary to salvation and as the ultimate standard of faith;

(2) Professing the faith as summed up in the Nicene and Apostles' Creed, holding to the doctrine commanded by Christ and to the Sacraments of Baptism and the Lord's Supper which He himself ordained, and accepting His discipline according to the commandments of God;

(3) Maintaining the threefold and apostolic ministry of bishops, priests, and deacons.

The constitution, which is embodied in eight articles, provides for the composition of the synod, viz., the bishops and clerical and lay delegates (four clergy and four laity from each diocese or missionary district) assembled triennially in two Houses—House of Bishops and House of Delegates—which are to meet separately or by mutual agreement together.

An act or resolution of synod must be passed by a majority in both Houses; and there may be voting by orders when claimed, in which case a majority of each order is required.

All delegates must be communicants in good standing, and must sign a promise of conformity to the preamble, constitution, and canons of the General Synod.

There is a standing committee, acting as an executive committee of synod, consisting of the chairmen of the two Houses and the secretaries and treasurer of synod *ex officio*, and also one bishop elected by the House of Bishops and one clergyman and one layman, each elected by the House of Delegates.

At the last assembly of the synod (April, 1915) resolutions were passed in favour—

(*a*) of the consecration of bishops-designate or elect in China;

(*b*) of a Chinese priest being raised to the episcopate as an assistant bishop in an existing diocese or as bishop in charge of a missionary district.

Sub-division was also declared to be needful in the case of at least three of the dioceses.

II. *Japan.*—The Anglican Communion here is called Nippon Sei Kōkwai (the Holy Catholic Church of Japan). The constitution contains a fundamental declaration to the same effect as that contained in the preamble of the constitution of the Church in China.

The General Synod meets under the presidency of one of the bishops (selected by the bishops themselves) triennially, and is composed of the bishops and of clerical and lay delegates elected

from each district. The bishops vote separately, and the delegates vote separately or conjointly. Questions are determined by a majority of the bishops and a majority of the delegates.

The functions of the synod are stated to be—

(1) the determination of the matters that concern the welfare and property of the Church;

(2) the formation of a society for domestic and foreign missions and the control of the same;

(3) the amendment of the constitution and canons.

There are fourteen canons which (*inter alia*) provide for—

(*a*) The election of the bishop in Diocesan Synod by clerical and lay delegates, subject to confirmation by the bishops. Failing such election, the General Synod elects, or two-thirds of those present of each order determining the result;

(*b*) The qualifications, examination, and ordination of candidates for Holy Orders;

(*c*) The requisites of a church congregation;

(*d*) The qualifications and functions of pastors who are selected by the adult male communicants;

(*e*) The constitution and functions of vestries, which must, as a rule, be composed of adult male communicants (*i.e.*, those who have communicated once at least within the year);

(*f*) District councils for each of the ecclesiastical divisions of the country;

(*g*) The constitution of the board of missions;

(*h*) The solemnization of marriages;

(*i*) The exercise of discipline;

(*j*) The standard Book of Common Prayer (which is based on the English and American Books and has its own features) and the Articles.

There are also resolutions on the formation of a diocese and the discipline of bishops.

Congregations resident in Foreign European Countries without a Local Bishop.

These remain under the episcopal jurisdiction of the Bishop of London (the Caroline Order in Council), who is precluded by the statute of 1534 (26 Henry VIII., c. 14) from appointing a suffragan bishop in their behalf, but he can be represented by

another bishop on special occasions appointed by a special commission from him, and can and has obtained the assistance of a bishop coadjutor.

Consular Districts Abroad.

The Church of England may as regards these be annually endowed to the extent of the amount of the voluntary contributions, and where such endowments are provided the chaplain is appointed by the Secretary of State and holds office during the pleasure of the Crown. The consul presides at the subscribers' meetings, and approves of their proceedings. (British Consuls Act, 1825.) All such State allowances have been discontinued since 1873.

THE CO-ORDINATION OF THE BRANCHES OF THE ANGLICAN COMMUNION.

An effective system of co-ordination is sought to be supplied through the regular assembly of the Lambeth Conference, which has so far met on five occasions (1867, 1878, 1888, 1897, 1908). Thus:—

1. A central body for consultative purposes has been formed. It consists at present of eighteen bishops, namely—

(*a*) The Archbishop of Canterbury (*ex officio*).

(*b*) Two bishops representing the Province of Canterbury and one representing the Province of York.

(*c*) One bishop representing the Church of Ireland.

(*d*) One bishop representing the Episcopal Church in Scotland.

(*e*) Four bishops representing the Episcopal Church in the United States.

(*f*) One bishop representing the Church of England in Canada.

(*g*) One bishop representing the Church of England in the Dioceses of Australia and Tasmania.

(*h*) One bishop representing the Church of England in the Province of New Zealand.

(*i*) One bishop representing the Church of the Province of South Africa.

(*j*) One bishop representing the Church of England in the Province of India and Ceylon.

(*k*) One bishop representing the Church of England Dioceses of China and Corea and the Church of Japan.

(*l*) One bishop representing the Church of England missionary and extra-provincial bishops under the Archbishop of Canterbury.

(Resolution 5, Lambeth Conference, 1897; Resolution 54, Lambeth Conference, 1908.)

2. It has been agreed that the Independent Churches of the Anglican Communion ought not to overlap each other in establishing missionary sees. (See, *e.g.*, Japan, Resolution 24, Lambeth Conference, 1897.)

3. It has been agreed that the daughter Churches should receive and maintain, without alteration, the standards of faith and doctrine as in use in the mother Church; but each province may make such adaptations and additions to the services of the Church as its peculiar circumstances may require. Provided that the same be not inconsistent with the spirit and principles of the Common Prayer Book, and that all such changes be liable to revision by any synod of the Anglican Communion in which that province is represented. (Resolution 8, 1867; Resolutions 45 and 46, 1897.)

Principles to be kept in view in any revision of the Common Prayer Book declared by Resolution 27, 1908.

4. The Conference of 1878, in its official letter, indicated the best mode of maintaining union between the various branches of the Anglican Communion. It thus formulated the advisability of referring matters of doctrine to a final tribunal of reference external to a province.

5. The Conference of 1888 and 1908 passed resolutions on the subject of marriage and divorce with a view to securing a uniform policy throughout the Churches of the Anglican Communion.

6. The attachment of the title of archbishop to every metropolitan, such title to be taken from a city or territory at the discretion of the province concerned, has been recognised (Resolution 7, 1897); also facilities have been given for consecrations in England with declaration of deference to the Archbishop of Canterbury, *vice* oath of personal obedience. (*Ibid.*)*

* The Colonial Clergy Act, 1874 (sec. 12), enables the two Archbishops in England to consecrate a bishop for work abroad without the requirement of an oath of due obedience to the consecrator.

Recognition of the Ministry of the Colonial Clergy in England.

Clergy (priests or deacons) ordained on English conditions by any bishop of the Anglican Communion, other than a bishop of the Church of England (in the established branch here) or the Church of Ireland, and not having previously held a curacy or preferment in England, may officiate here with the written permission of the archbishop of the province, and on making the declaration required by the Clerical Subscription Act, 1865; but not otherwise.

They must also obtain the written consent of the bishop of the diocese concerned before being admitted or instituted to any benefice or ecclesiastical preferment here.

The archbishop may issue a licence to any person who has for a period of two years been holding preferment, or acting as curate, with such consent of the bishop as aforesaid, and thereupon such person is in the same position as if he had been ordained by a bishop of a diocese in England. (Colonial Clergy Act, 1874.) This, however, does not refer to persons ordained under the Colonial Bishops Act, 1852 (15 and 16 Vict., c. 52), which enabled East Indian bishops, and others under commission from bishops in England and Ireland, to ordain clergy, &c., in the dioceses of the last-named bishops. The conditions on which clergy of the Episcopal Church in Scotland may officiate in England are, as previously stated (*supra*, p. 101), regulated by special enactment.

APPENDIX V.

MEMORANDUM ON THE ESTABLISHED CHURCH OF SCOTLAND.

I.—HISTORY.

The much greater degree of independence enjoined by the established Church of Scotland as compared with that possessed by the Church of England is to be accounted for partly by the conditions of the Pre-Reformation Church in Scotland, and partly by the circumstances of the Scottish Reformation. From the year 1225, when a Bull of Honorius III. authorised the Bishops of Scotland to act together (although they were not under any metropolitan) down to 1559, the Scottish Church held annual councils of "bishops, presbyters, and lay commendators," meeting in one house for "expounding and applying the laws of the Church Universal" in the kingdom of Scotland. This assembly asked for and required no royal authority. It undoubtedly furnished a precedent for the spiritual independence of the General Assembly.

The Reformation in Scotland was carried through by a body of Scottish nobles (the "Lords of the Congregation") and a number of the clergy, the bishops and the Crown being alike hostile to the movement. The Reformers were therefore able to shape a new form of Church organisation without the interference of the State, and the General Assembly was really much more representative of the people of Scotland than the ineffective Scottish Parliament.

In 1560 the Confession of Faith was read before Parliament, and accepted as the creed of the kingdom. Several statutes were passed dealing with tithes (teinds) and other matters, and in 1579 an important Act was passed "declaring and granting" jurisdiction to the Reformed Kirk, and declaring that no other ecclesiastical jurisdiction shall be acknowledged in the realm. Finally, the Act of 1592 "ratifies and approves" the constitution and liberties of the Church. The effect of this Act is to establish the jurisdiction of the Church Courts as "recognised judicatories of this realm." This Act was ratified in 1690, and again in 1706, as a condition of the Union.

During the seventeenth century the Scottish people were occupied

in a long struggle for the maintenance of the ecclesiastical independence against the encroachments of the later Stuart kings.

Into the details of that struggle there is no need to enter. It came to an end with the Revolution, and the restoration of the old system was effected by the Acts of 1690 and 1693, which "ratify and establish" the Confession of Faith and the Presbyterian system of Church Government. The Act of 1693 (the Ministers Subscription Act) has two special points of interest. It enjoins "that the Lords of their Majesties' Privy Council, and all other magistrates, judges, and officers, give all due assistance for making the sentences and censures of the Church and judicatures thereof, to be obeyed, or otherwise effectual as accords"; and, as amended by the Churches (Scotland) Act of 1905, it leaves the General Assembly, with the consent of the Presbyteries, free to enact the formula of subscription.

The only important constitutional change since this time was the Patronage Act of 1874, which is referred to below.

II.—THE PRESENT POSITION.

Relation to the State.—The Constitution of the Church has been ratified and confirmed, rather than conferred, by the State, and all Statutes, Acts, Canons, &c., inconsistent with the Constitution and powers conferred and recognised by the Act of 1592 have been repealed by it. Adhering to the substance of the Faith of the Reformed Churches, and the Presbyterian form of Church government, the Church has a right to—

(1) frame its subordinate standards;

(2) constitute its own courts;

(3) legislate and judge in all matters of doctrine, government, worship and discipline, membership and office;

(4) appoint its agents and their spheres of service;

(5) alter its own Constitution within prescribed limits and in accordance with prescribed procedure.

The authority and power of the Courts of the Realm is fully recognised in matters of property and civil right.

Patronage.—The Patronage system was reformed by the Church Patronage Act of 1874, which, after reciting that the Crown had been graciously pleased to signify that it had placed at the disposal of Parliament its interest in the several rights of advocation, donation, and patronage, of churches and parishes in Scotland, (i.) declared all rights of appointment to be vested in the congregations of vacant churches and parishes, subject to Regulations of General Assembly, and (ii.) provided for the compensation of private

patrons on application to the sheriff within six months after the passing of the Act, failing which all claims to compensation were to be taken as renounced. The amount of compensation was to be "the average of the three preceding years' stipend from the teinds," to be paid in four yearly instalments out of the stipend payable to the minister. (Compensation amounted therefore to one year's purchase of the benefice.)

Church Franchise.—The definition of the congregation was left to the General Assembly, which accordingly made regulations for the compiling of the roll of the congregation in each parish, such roll to consist of the names of

(1) All communicants for the time being;

(2) Adherents, *i.e.*, parishioners or seatholders of full age who have formally claimed in writing to be on the electoral roll, and in regard to whom the Kirk Session is satisfied that they desire to be permanently connected with the congregation or are associated with it in its interests and work, and that no reason exists for refusing to admit them to the Communion if they apply.

(This franchise may be compared with that adopted in the case of our Representative Church Council, the object in both cases being to avoid making Communion a qualifying test for electoral rights.)

Constitution.—The Scottish system of Church government is based on the co-ordinate authority of the Teaching Elders (ministers ordained by the Presbytery) and Ruling Elders (laymen set apart for the officer by the minister). In all the Assemblies of the Church the two sit and vote as one body—*i.e.*, there is no "vote by orders." All Elders (of both kinds) must at the time of their "ordination" (the word is used for the setting apart of the Ruling Elder as well as for the ordination of the Teaching Elder) assent to the Confession of Faith and to the discipline, worship, and government of the Church as established by law.

(i.) *Kirk Session.*—Every parish has a Kirk Session. The minister is *ex officio* "moderator." There is no limit to the number of elders, who are selected by Kirk Session, and "ordained" after adequate opportunity has been given for any objection to be raised. There must be at least two present in session with the minister to constitute a quorum.

The minister conducts public worship, administers the sacraments, and ordains and admits elders. He summons meetings, and has a casting vote in case of equality of voting. The Kirk Session assists him and in particular arranges the hours of service,

judges of the fitness of applicants for Church membership, exercises discipline, and grants to members certificates of fitness on removal from the parish. It keeps the roll of communicants (which it submits annually to the Presbytery with the record of its proceedings), the roll of the congregation, the baptismal and banns registers. It sees that the Acts of Assembly are put into operation, and that collections are duly made.

In the case of the old parish churches the charges of maintenance of the fabric of the church and manse are borne by the "heritors"; that is, roughly speaking, the landowners of the parish. In newly constituted parishes—*Quoad sacra* parishes, as they are called—they are borne by the congregation.

(ii.) *Presbyteries.*—These consist of—

(*a*) The ministers of the several parishes in the Presbytery district, and the Professors of Divinity, if they are ministers, of any University within the district;

(*b*) One elder for each Kirk Session within the district, elected annually by the Kirk Session.

(The number of ministers and laymen are therefore equal, except where there is a Divinity professor sitting.)

The moderator is elected and is by custom always a minister, all the ministers usually holding the office in rotation.

The Presbytery regulates and controls the appointment and work of the ministers and deals with any charges or complaints against them. It can suspend or depose them. It tries presentees and conducts their ordination and induction, and grants licences to preach. Every minister on ordination promises to submit to the jurisdiction of the Presbytery. Parishioners may present charges against him, and the Presbytery may initiate proceedings in the case of *fama clamosa*. The Presbytery can review *mero motu* all decisions of Kirk Sessions within its area.

The Presbytery also determines all matters connected with glebes, and the erection and repair of churches and manses (subject to appeal to the Civil Court), and generally superintends the work of the parishes within its bounds.

Judgments may be enforced, if need be, by application to the Civil Courts, which alone have power to add civil consequences to ecclesiastical judgments.

(iii.) *The Provincial Synod.*—The Presbyteries are grouped into Provincial Synods, each being composed of not less than three Presbyteries. There are at present 84 Presbyteries, grouped in 16 Synods. All members of the Presbyteries included in the Synod are members of the Synod. The Synod meets twice a year, chiefly to deal with appeals and complaints from the Presbyteries. It can also review *mero motu* the decisions of the Presbyteries.

(iv.) *The General Assembly.*

(*a*) Constitution. It consists of—

i. Ministers and elders annually elected by the several Presbyteries—one minister for every four or part of four ministers, and one elder for every six or part of six ministers in the Presbytery (rule of 1893);

ii. Two elders annually elected by the Town Council of Edinburgh, and one by each of the other 69 Royal Boroughs;

iii. A minister or elder elected by each of the four Universities;

iv. A minister or elder elected annually by the Church in India.

(The Assembly now contains 371 ministers and 333 elders.)

(*b*) Method of Convention—

The General Assembly is not convened by the Crown, and may meet on its own initiative (Act of 1592). It is usual for each Assembly to fix the time and place of meeting for its successor, which is then notified by the moderator, and "declared and intimated" by the Lord High Commissioner, who attends the Assembly as representing the Sovereign, presents a royal letter, addresses the Assembly, and dissolves it after the moderator has dismissed it in the name of Christ. The Lord High Commissioner is not a member of the Assembly, and exercises no control over its business.

(*c*) Powers—

(1) The Assembly possesses full powers of legislation and administration. It can within prescribed limits alter its Constitution. By the Barrier Act (an Act of Assembly passed in 1697) "any Acts that are to be binding rules and constitutions of the Church" must, after passing through the General Assembly, be remitted for the consideration of the Presbyteries, and require the approval of a majority of these. In 1736 the rule was applied to "Acts rescissory of any standing Acts," and in 1848 to "any Act which involves an essential alteration of the existing law or practice." The Assembly may, however, pass interim Acts, which are valid till the next Assembly, and may (as the sole interpreter of its own laws) pass declaratory Acts.

(2) The Assembly deals finally with complaints and appeals, and petitions against decisions of Presby-

teries. It may also review *mero motu* decisions of lower courts.

(3) The Assembly also deals with "overtures" (proposals for change in the law, practice, policy, &c., of the Church), appoints committees and deals with their reports, and alters the bounds of Presbyteries. It has no power to create new parishes. It also appoints a "Committee of Assembly" to act in the interval before the next Assembly meets, with specified powers.

Endowments.—The endowments of the Church of Scotland amount to £369,200 per annum, made up as follows:—

Teinds of parishes	£220,000
Grants from exchequer (as a partial equivalent for old endowments now received by the Crown)	17,000
Receipts from burghs and other local funds ...	23,500
Income raised by Church herself	62,700
Annual value of manses and glebes	46,000

Interference by Civil Courts.—Civil Courts cannot interfere with anything done within the sphere of jurisdiction of the Ecclesiastical Courts, which are recognised judicatures of the realm. In no case will the Civil Court entertain an appeal from a judgment of an Ecclesiastical Court on a question of doctrine, or enter on an examination of the soundness of such judgment before enforcing its civil consequences. All matters of ritual are exclusively within the sphere of the Ecclesiastical Courts, but it is conceivable (though extremely improbable) that a case might arise in which flagrant departure from the form and purity of worship established by the Act of 1707, if uncorrected by the Ecclesiastical Courts, would justify an appeal to the Civil Courts. No appeal lies to a Civil Court in matters of discipline, or on the ground of excess of punishment, unless there is excess of jurisdiction (*e.g.*, unless punishment is inflicted for obeying the law of the land).

On the other hand, the Civil Power is bound to "give all due assistance for making the sentences and censures of the Church and her judicatures to be obeyed or otherwise effectual as accords" (Act of 1693).

The Presbyterian form of Church government, and the Confession of Faith, are approved by the State, and the State would therefore have the right to be consulted on any proposal for changing these.

The Civil Courts hear and determine appeals on matters connected with Church property, glebe, repair of churches, &c.

III.—REUNION PROPOSALS.*

Negotiations have been in progress for some time for the reunion of the United Free Church (possessing a communicant roll of 500,000) with the Established Church (possessing a communicant roll of 715,000). These negotiations have turned upon two points:—

(1) The Spiritual freedom of the Church;

(2) The National recognition of Religion.

With regard to the first, the United Free Church holds that the Established Church has not the Spiritual independence that is essential, regards the element of legal privilege as a further bar to reunion, and asks that the Constitution of the Church shall be "recognised by Parliament as the Constitution of the Church of Scotland," but shall neither be prescribed nor ratified by Parliament. The following statement has been agreed upon by the representatives of both Churches:—

> "It is a matter of agreement that the Constitution must fully and explicitly set forth the liberty, rights, and powers of the Church of Christ as not given by the State and not to be controlled or restrained by any relation to the State. The Constitution would therefore make it clear that the Church, as a Church adhering to the substance of the faith of the Reformed Churches, and to the Presbyterian system of Church government, claims the right to frame its own subordinate standards, to constitute its own courts, to legislate and judge in all matters of doctrine, government, worship, and discipline, membership and office, to appoint its agents and their spheres of service, the decision of its courts being in all such matters final. The Constitution would also reserve the Church's right to alter the Constitution itself within the limits and according to the procedure prescribed therein."†

What is suggested is that Parliament should be asked to pass a statute repealing all clauses of all Acts inconsistent with this freedom claimed by the Church. Such a statute would be necessary to preserve the legal continuity of the present Established Church. The Established Church has laid it down in its Memorandum that "the endowments are to be conserved for the United Church," and states that it "will only go forward in the matter of union upon the footing that the United

* See *The Ecclesiastical Situation in Scotland, Report of Committee to the General Assembly of the United Free Church*, May, 1913, and the *Report of Committee to the General Assembly of the Church of Scotland*, 1914. See also "Note on the Secession of 1843," at the end of this Memorandum.

† *Ecclesiastical Situation in Scotland*, p. 14.

Free Church and the Government of the day, which is to make itself responsible for the necessary legislation, accept the position that the endowments are not to be secularised."* The Established Church proposes that these two points—the recognition of the spiritual independence of the Church, and the continued appropriation of endowments to religious purposes—should be clearly asserted in the preamble of the proposed Act of Parliament. The question of "National recognition" has proved much more difficult of adjustment. At present the recognition given to the Established Church is statutory and "consuetudinary"; recognition in the last sense being signified by the presence of the Lord High Commissioner at the General Assembly. To this form of recognition the United Free Church raise no objection. In the matter of statutory recognition, the relations of Church and State would under the proposed new arrangements be regulated (1) by the fact that Parliament had recognised the Constitution of the Church, and (2) by the unrepealed part of the various statutes dealing with the Church of Scotland, in which its Protestant and Presbyterian character are asserted. It would seem that the United Church would not have power to modify its Presbyterian system without the permission of the State.

Two clauses in the Memorandum of the Established Church are of interest in this connection :—

> "One of the obstacles to union is the view that exclusive recognition of a National Church infers positive injury to all other Churches by depressing their position in the eye of the law. There are expressions in some of the statutes which give colour to this argument, and it seems desirable to meet it, if not by positive legislation for these Churches, at all events by a statutory disclaimer of any exclusive claim of the Church of Scotland to recognition by the State in Scotland as a Christian Church."
>
> "It is a matter for earnest consideration whether a provision might not be embodied to the effect that nothing contained in any Act of Parliament in relation to the Church of Scotland should be construed to the prejudice of the recognition by lawful authority of any other Church in Scotland as a Christian Church protected by law in the exercise of her spiritual functions." †

If such an expedient were adopted, the special recognition of the Church of Scotland would presumably rest upon the fact of her being the most adequate representative of the Christianity of the nation.

* *Ecclesiastical Situation in Scotland*, p. 11.
† *ibid.*, pp. 10, 13.

The Established Church Committee has drafted a Constitution,* which it has submitted to the Presbyteries of the Church, and to the United Free Church, "not as a final document submitted for their approval, but as a basis for further discussion." Further consideration of the matter has been hindered by the war.

Some Comments.—It is obvious that the present position in Scotland is in no way analogous with ours. When the two Churches are united the vast majority of the people of Scotland will be included in the united Church.

The points of special interest for the Committee seem to be—

(1) The position taken up by both Churches, that spiritual independence is a right to be claimed, not a boon to be requested;

(2) The belief of the Established Church that this independence can be secured without either abandoning the idea of a National Church or assenting to the secularisation of endowments, though it is admitted that the matter of endowments is not a domestic matter, but one to be determined by Parliament.

(3) The strong position already secured by the Scottish Church as the outcome of—

(*a*) The recognition of the rights of the congregation, while the proper independence of the minister is secured by the control of the Presbytery.

(*b*) The full recognition of the co-ordinate authority of the faithful laity in all the Courts of the Church.

Note.—The Secession of 1843.

It may be useful to give the main facts with regard to this. For about ten years before this date an active section of the Scottish Church had resented the restrictions on the independence of the Church, particularly in the matter of patronage. The struggle began with the passing of the Veto Act by the General Assembly of 1834. By this Act an objection by a majority of "male heads of families, members of the congregation and in full communion with the Church" was declared to be a sufficient ground for a refusal by the Presbytery to accept the nominee of the patron to a vacant benefice. This Act brought the Church Courts into collision with the Civil Courts. The test case was the Auchterarder case, in which Lord Kinnoul presented the Rev. R. Young to the vacant benefice. On the protest of the

* See *Report of Committee to General Assembly of the Church of Scotland*, 1914.

great majority of the congregation, the Presbytery refused to "take trial of" Mr. Young's qualifications. On appeal, the Civil Courts declared the Veto Act illegal. In the Marnoch case, soon after, the Presbytery determined to "take on trial" the Rev. J. Edwards, in spite of the protest of the congregation. For this the seven Presbyters were deposed by the General Assembly, but reinstated by the Civil Courts.

The Stewarton case raised the question of the right of the Presbytery to divide a parish, and allot to the minister of the newly constituted parish a seat in the Presbytery. On appeal by the patron, the Court of Session declared the action of the Presbytery illegal.

In 1842 the non-intrusive party in the General Assembly requested the High Commissioner to lay before the Crown a series of resolutions on these matters, and when, in 1843, no reply was forthcoming, the moderator, who was the leader of the disaffected party, read a solemn protest and then withdrew, followed by a large section of the Assembly. In the end 451 ministers seceded, and 752 remained in the Established Church. The patronage question, which had been a chief cause of the secession, was settled in 1874. (See above.)

APPENDIX VI.

MEMORANDUM ON THE LEGAL RELATIONS OF STATE TO CHURCH.

THE KING AND THE CHURCH.

The Royal Supremacy.

The Royal supremacy is declared in 1 Eliz., c. 1. (1559, Supremacy Act), and its meaning defined in Article XXXVII.

The purpose of the Act was to exclude foreign jurisdiction, and to assert the supremacy of the Crown in all causes, as well ecclesiastical as temporal.

Administrative.

The King possesses the nomination to archbishoprics and bishoprics, and the nomination to the deaneries of cathedral and collegiate churches. These nominations are made by the King with the advice of the Prime Minister for the time being.

The King enjoys other church patronage, either by statute or as an owner of property, and has the right to fill vacancies caused by the appointment to a bishopric.

Legislative.

The two Archbishops, the Bishops of London, Durham, and Winchester, and twenty-one diocesan Bishops in order of seniority, are summoned to the House of Lords.

The Convocations of the Clergy may not meet unless summoned by the Archbishop instructed by Royal writ to issue such summons, nor can they make canons without previous licence from the Crown, nor when made can they promulge them, so that they may have effect, without a further licence. These licences are given by the King with the advice of his Ministers.

General.

The relation of the King to the Church indicates in other ways that the Church is the National Church, the visible sign that the State is a Christian community. Thus it is a condition of the title to the throne that the King should "join in communion with the Church of England as by Law established." *

At the Coronation of the King, a religious service, he is required to take an oath that he will "maintain and preserve inviolably the Settlement of the Church of England, and the doctrine, worship, discipline, and government thereof as by Law established in England." †

The important feature to note in the relation of the King to the Church is that in appointments to the ecclesiastical office, and in granting to Convocation the exercise of its limited legislative powers, the King acts with the advice of his Ministers for the time being.

PARLIAMENT AND THE CHURCH.

Constitution.

The constitution of Convocation does not depend on any statute, but on custom. To alter the custom it would appear to be necessary to have the assent of Parliament as well as of Convocation.

The opinion of the Vicar-General on the election of Proctors with the authorities then cited, given in 1911 (see *Convocation of Canterbury Report*, 1912, No. 462) would seem to be conclusive on this point.

Changes in Doctrine or Form of Worship.

The doctrine of the Church of England is to be found in the Book of Common Prayer and in the XXXIX. Articles of Religion.

The form of worship is embodied in the Book of Common Prayer.

These being recognised by statute, the consent of Parliament is necessary to any change in the doctrine or form of worship of the Church of England.

* 12 & 13 Will. III., cap. 2 (1700).

† Anson, *Law and Custom of the Constitution*, vol. ii., p. 236. 3rd Edition, 1907.) Form used by Edward VII. and George V.

In order that canons enacted by Convocation should bind the laity, they must receive the sanction of Parliament. Thus the Canons of 1603, which did not receive Parliamentary sanction, have been held not to bind the laity except in so far as they embody ancient and accepted law or custom of the Church. (Lord Hardwicke in *Middleton* v. *Croft*. 2 Atkyn's Report, 650.)

It may be well to illustrate the relation of Parliament to the Church from the more important instances of legislation affecting the doctrine or the worship of the Church: in some cases, though not in all, with the concurrence of the Convocations.

The form of subscription to the Articles of Religion required by 13 Eliz., c. 12, was modified by 28 & 29 Vict., c. 122, and in 1865 the 36th Canon was altered in correspondence.

The Act of Uniformity (13 & 14 Car. II., c. 4) was amended in accordance with the expressed wish of the two Houses of Convocation, and shortened or modified forms of service were legalised by 35 & 36 Vict., c. 35.

Changes affecting Canons.

1. *With Consent of Convocation.*—The lawful hours during which marriage might be celebrated were prescribed by statute, 4 Geo. IV., c. 76, and also by the 62nd Canon, and civil as well as ecclesiastical penalties imposed for breach of the law. In 1886 Parliament, by 49 Vict., c. 14, extended these hours, and in 1888 the 62nd Canon was altered so as to make the law of the Church correspond with that of the State.

2. *Without Consent of Convocation.*—There are other cases in which statute law is at variance, more or less direct, with the Canons of 1603.

Thus, the 76th Canon forbids the relinquishment of orders on pain of excommunication. The Clerical Disabilities Act, 1870 (33 & 34 Vict., c. 91) provides for the relinquishment of his orders by priest or deacon under specified conditions, and thenceforth makes him incapable of officiating and holding preferment, while it removes his ecclesiastical disqualifications in other respects, and relieves him from ecclesiastical censures and other proceedings.

The canon remains unaltered, but it has been rendered inoperative by the Legislature, though it may be maintained that the spiritual effects of ordination are indelible.

In the marriage law there appears to be considerable variance between statutes and canons.

In 1857 Parliament, by 20 & 21 Vict., c. 85, removed jurisdiction in matrimonial causes from the Ecclesiastical Courts, made it possible for married persons to obtain, under certain conditions, divorce *a vinculo*, and legalised the re-marriage of divorced

persons. This would seem to be at variance with the 107th Canon, but that canon has not been modified to correspond with the legislation of 1857.

Again, by 7 Edw. VII., c. 47, Parliament legalised marriage as a civil contract with a deceased wife's sister; but the 99th Canon dealing with the degrees of affinity within which marriage is prohibited remains.

Thus we find in the marriage law two instances in which Parliament has legislated in a manner which brings rights conferred by the State into possible conflict with duties which the clergy may regard as imposed upon them by the Canons.

This variance is quite distinct from any difficulty which may arise from the interpretation which the clergy or others may place on passages in Scripture; it is a variance between statute law, which determines the rights and duties of all citizens, and canons, which are binding, generally speaking, on the clergy only, and which might be enforced by ecclesiastical censure or discipline.

Statutes affecting Property or Civil Rights.

It would not be worth while to enumerate the many statutes which deal with Church property, and with the administration and civil rights of the Church.

THE COURTS AND THE CHURCH.

The law of the Church is a part of the law of the land; it is not "foreign law to be ascertained by evidence, but part of the common law." (Farwell, L.J., in *R.* v. *Dibdin* (1909), P. D., 135.)

The law of the Church as regards doctrine and worship, and as distinct from those civil rights arising from proprietary and personal relations which are proper to the secular courts, is administered in the Courts of the Church. These have a recognised jurisdiction; if they exceed it they may be restrained by writ of prohibition. Their sentences, when duly pronounced, may be enforced by the civil power.

But Parliament has in various ways dealt with the Jurisdiction, the Constitution, and the Procedure, of the Courts of the Church.

Jurisdiction.

In the matter of excommunication, 53 Geo. III., c. 127.

In testamentary and matrimonial causes, 20 & 21 Vict., cc. 77 and 85.

In cases of brawling or ill-behaviour in church, 23 and 24 Vict., c. 32.

And in other cases.

Constitution.

1. The Consistory Courts have been altered for cases of clergy discipline by the Church Discipline Act (3 & 4 Vict., c. 86) and the Clergy Discipline Act (55 & 56 Vict., c. 32).

2. The Public Worship Regulation Act (1874) (37 & 38 Vict., c. 85) subjected the Archbishops' appointment of their Officials Principal to the approval of the Crown under the sign-manual. A Court of Appeal against a refusal of the Bishop to institute was created under the provisions of the Benefices Act (1898) (61 & 62 Vict., c. 48).

3. The Court of Final Appeal (Delegates) constituted under 25 Hen. VIII., c. 19, was changed by 2 and 3 Will. IV., c. 92, so that appeals went to the Privy Council, and later (3 & 4 Will. IV., c. 41) to the Judicial Committee of the Privy Council, which itself has been modified in various respects by subsequent statutes.

Procedure.

This has been frequently regulated in ecclesiastical cases, as, for instance, by the Church Discipline Act (3 & 4 Vict., c. 86), the Public Worship Regulation Act (37 & 38 Vict., c. 85), and the Clergy Discipline Act (55 & 56 Vict., c. 32).

But though Parliament has in these various ways dealt with the Courts of the Church, questions of doctrine and worship are left to be decided by those Courts, with an appeal by anyone aggrieved for lack of justice to the Judicial Committee of the Privy Council.

From time to time the secular courts may have to deal with cases in which the question of an ecclesiastical offence arises, and it may be difficult to say whether they are or are not determining a question of ecclesiastical law, as for instance:—

In an action in the nature of a *quare impedit*, brought by the patron of a living claiming the institution of a clergyman who was alleged to have committed an ecclesiastical offence, and who refused to give an undertaking that, if instituted, the offence should not be repeated, a secular court held that the Bishop had a discretion in the matter which he was entitled to exercise. (*Heywood* v. *Bishop of Manchester* (1884), 12 Q. B. D., 404.)

Again, the secular court was asked to issue a writ of prohibition on behalf of a clergyman whom the Court of Arches had admonished for repelling from the Sacrament of the Holy Communion two persons lawfully married under the provisions of 7 Ed. VII., c. 47. The case turned partly on the construction of a

rubric, partly on that of a statute. In the Court of Appeal it was argued that a secular court would not deal with a matter which was partly concerned with purely ecclesiastical law, citing Lord Blackburn's speech in *Mackonochie* v. *Lord Penzance* (1881), 6 Appeal Cases, at p. 440. But the Court, admitting that it was not easy to draw the line, adjudicated upon the case, refused the writ, and their judgment was affirmed by the House of Lords. (*R.* v. *Dibdin* (1909), P. D., 135.)

The dealing with questions concerning the doctrine and worship of the Church is therefore confined, save in rare and doubtful cases, to the Church Courts. It would be otherwise in the case of a disestablished Church. Such a society would necessarily own property, the enjoyment of which would be conditional on holding or expressing doctrines of a definite character, and in the case of dispute as to the right of an individual to the enjoyment of an endowment, or access to a building, those doctrines might be discussed and interpreted in the secular courts. (*Attorney-General* v. *Gould* (1860), 28 Beavan, 485; *Free Church of Scotland* v. *Lord Overtown* (1904), A., 515).

APPENDIX VII.

CHURCH AND STATE IN ENGLISH HISTORY.

PREPARED BY BISHOP G. F. BROWNE AT THE REQUEST OF THE COMMITTEE.

Church and State in Anglo-Saxon times.

When we speak of the relations of Church and State in early times, we must remember that we are merely speaking of the spiritual and secular sides of the interests and business of the kingdom, as represented by the clerical element and the lay element in the witenagemot or the law court. There is no question as between those who were members of the Church and those who were not, for all were members of the Church. There might be, and there were, conflicting interests as between the clergy and the laity, and jealousies on either side. The fact that the clergy claimed mysterious powers, and exercised spiritual discipline sometimes of a very drastic character, was in itself enough to create a sense of opposition, and to cause friction. The large growth of the territorial possessions of the clergy, to use the term "clergy" inclusively, tended to increase the sense of opposing interests. That note is struck very early, so far as the monasteries are concerned, by Bede himself, a strong churchman if there ever was one. He complains, in his letter to Ecgbert of York in or about the year 735, that so much land had been given to monasteries that there was not sufficient land left at the disposal of the king either to endow the new bishoprics which were much needed or to reward the soldiers who formed the defence of the kingdom. Bede's proposal was that for one of these two main purposes some monasteries should be grouped under a bishop as abbat, and serve as the endowment of the bishopric. It should be noted that Henry VIII. used both of the pleas for dealing with monastic property which Bede had declared to be urgent exactly eight hundred years before, the need of new bishoprics and the necessary cost of the defence of the realm from invasion.

Witenagemots of the Heptarchy.

Throughout the Anglo-Saxon times the greater affairs of Church and State alike were conducted by the "assembly of wise men." In the several kingdoms of the Heptarchy this assembly consisted of the king, the bishops and abbats, the leading laymen (ealdormen, principes, comites, duces), and the king's chief officers and attendants (ministri, or king's thegns). The central kingdom, Mercia, was the best organised of the kingdoms, under King Offa; his witenagemot varied in numbers. We have three examples. (1) The five bishops of his kingdom, seven abbats, and six ealdormen; (2) the five bishops, one abbat, seven principes, and two duces; (3) four bishops, and four ealdormen.

Councils of the Church of the English.

Besides this constitutional procedure in each several kingdom of the Heptarchy, the Church of the English throughout the whole nation held its own councils for the management of its own spiritual affairs; thus training the English towards the national unity which came about on the disappearance of the system of separate kingdoms.

Witenagemots of the kingdom of England.

The "assembly of wise men," similarly constituted, continued to be the great council of England after England became one Anglo-Saxon kingdom. As in the several witenagemots of the Heptarchy, the bishops had precedence of the other members; but except in the matter of precedence Church and State were equals under the king. The Church was not independent of the State, nor the State of the Church. Their relation was that of interdependence; they were two in one, each naturally taking the lead when its own affairs were in question. This was true both of legislation and of judicial power and action. In the courts of all degrees the representatives of the State and of the Church sat side by side and gave joint judgment.

Numbers of the Witan.

The witenagemot of the whole kingdom was naturally much larger than those of the several kingdoms had been. Dr. Stubbs* regards the lists of A.D. 931 and 934 as the fullest. They contain respectively (1) two archbishops, two Welsh princes, seventeen bishops, fifteen ealdormen, five abbats, and fifty-nine ministri, and (2) two archbishops, four Welsh kings, seventeen bishops, four abbats, twelve ealdormen, and fifty-two ministri. As a fair specimen of the usual proportion, Dr. Stubbs takes the witenagemot of A.D. 966, with its king's mother, two archbishops, seven bishops, five ealdormen, and fifteen ministri. The latest attestation of Anglo-Saxon times is found in the promulgation by Edward the Confessor, eight days before his death, of the privileges of his Abbey Church of Westminster, as granted by Pope

* *Constitutional History of England* (ed. 1879), i., 140.

Nicholas II. The signatures are those of Edward, Eadgith, Stigand and Ealred of Canterbury and York, nine bishops, seven abbats, the Chancellor, three king's chaplains, Harold dux, four earls, seven ministri, and five knights. Probably by reason of the king's physical and mental incapacity, the queen signs *omni alacritati mentis hoc corroboravi.*

Changes in early Norman times.

When we come to the changes made at the Norman Conquest, we find the king, the archbishops and bishops, with abbats and many persons of religious orders, holding a council in A.D. 1072, to consider the relations between the two Archbishops, Canterbury and York. The council began its proceedings at Easter in the Royal Chapel at Winchester, and completed them at Pentecost at the royal vill of Windsor. The decision of the council was signed by William, Matilda, the papal legate Hubert, Lanfranc and Thomas the archbishops, eleven English bishops, Odo Bishop of Bayeux and Earl of Kent, Gosfrid Bishop of Coutances and one of the primates of the English, and thirteen abbats. Three times in the body of the document the matter is said to have been discussed and decided by the king, bishops, and abbats. There was no representation of the laity, Odo and Gosfrid being present as bishops closely concerned in English affairs. This struck the note of the arrangements made by William and Lanfranc for regulating the relations of Church and State, to which we must now turn.

The ecclesiastical law.

And, first, of the ecclesiastical law. In 1052 Edward the Confessor issued ecclesiastical laws. These laws William, describing himself as Edward's heir and relative, confirmed. We have a few of them in the Norman-French into which William had them put.

The law common to the whole Church of the West, the ecclesiastical *Jus Commune*, called "of Rome" because Rome was the head of the Western Church, was naturally the main body of the ecclesiastical law in the Anglo-Saxon courts. But it would be a mistake to suppose that the English ecclesiastical judges, either before or after the Norman Conquest, did not administer a considerable amount of Church law of English growth. It must be remembered that there was no authoritative codification of Roman canon law till the middle of the twelfth century, and, further, that Roman canon law itself recognised the validity of local customs even though inconsistent with papal decretals.

The separation of ecclesiastical and secular courts.

In some important points English custom certainly prevailed in our courts. That there was a large body of customary and provincial Church law in use in the Anglo-Saxon courts, continued in operation by William, may be seen in the document in which he

decrees the separation of ecclesiastical and secular courts. The document is addressed to some lay magistrates, and runs thus :—

> "Be it known unto you that by common counsel, and by the common counsel of the archbishops, bishops, abbats, and all the chief men of my kingdom, I have determined that such of the episcopal laws in England as have not been right, nor in accordance with the precepts of the holy canons, shall be amended. Further, I command, and by my regal authority enjoin, that no bishop or archdeacon bring any plea in Hundret [that is, before a secular court] nor bring any cause touching cure of souls to be judged by secular persons. Any one who is called in question on episcopal law shall come and answer in the place which the bishop shall name, and not in Hundret, and shall do right to God and his own bishop according to the canons and episcopal laws. If any one, elated by pride, refuse to come to episcopal justice, let him be called once, twice, thrice, and if even so he still declines, let him be excommunicated; and if need be, let the force and justice of the king or of the vice-count be called in to enforce this; and for each of the three summons he shall pay as the episcopal law shall order. And I forbid, and by my authority prohibit, that any vice-count or provost or other minister of the king intrude himself in any matter of laws which pertains to the bishop."

Results of the separation of the courts.

This was the greatest change made by William in the relations of Church and State. In Anglo-Saxon times the courts of several degrees had each dealt with matters ecclesiastical and secular. The village courts, the hundred courts, the county courts, the witenagemot, each had ecclesiastical and secular officials side by side. Serious consequences followed naturally from this change from English to continental practice. The common law and statute law prevailed in the secular courts, the canon law and episcopal law prevailed in the ecclesiastical courts, and the two legal systems were not always in harmony. The inevitable tendency was to make the clergy a class apart from the rest of the nation, especially in regard to interests and offences common to clergy and laity. In those days it had a far-reaching effect. The secular part of the community had its natural head in the king, beyond whom they had no call or occasion to look. The clerical part of the community looked to a mysterious spiritual head of the Western Church in the Pope, the Bishop of its chief see. The interests and the instructions of the secular head were by no means always in harmony with those of the spiritual head. There was the sense of a divided headship, the risk of a divided allegiance. The national history of the next five hundred years is a record of endless disturbance, and those centuries have left to us a legacy

of unwelcome unrest. There was the further difficulty that a large amount of jurisdiction which vitally affected the citizen life of the people of the kingdom was in the hands not of the civil but of the ecclesiastical judges, as, for instance, all testamentary and matrimonial cases. That was only done away with in the second half of last century.

The constitutional position of bishops and abbats.

The position of the bishops and abbats underwent one important change at the Conquest, which may have involved another. By Anglo-Saxon custom they were free from the performance of services to the State in return for their official possessions. William enrolled them as responsible for the provision of soldiers for his wars, converting their tenure from "free alms" into "tenure by barony," and by natural sequence he invested them into their office and required a declaration of fealty. It seems to be not clear that this altered the condition on which they sat in the Great Council, into which William converted the witenagemot with as little change as might be. They appear to have been summoned to its meetings in terms differing in one respect from the terms in which lay barons were summoned. The investiture of bishops and abbats by a lay sovereign led very soon to a tremendous conflict which was waged in Europe for a long series of years. In an age when offices were conferred by symbols, the investing with ring and staff had no doubt a spiritual flavour, though it seems clear that William did not intend by it any sort of claim to spiritual authority. The controversy was eventually ended in Europe in the manner which the common-sense of Norman England had adopted fourteen years before as a reasonable compromise. The king (Henry I.) abandoned the investiture, but required the bishop or abbat-elect to do homage for the temporalities of the see or abbacy.

The relations of England with the papacy.

In concert with Lanfranc the archbishop, William settled the relations of the Church with the king and with the Pope.

In the first place, the clergy were not to recognise any one as Pope until the king's recognition was announced. There were anti-popes at three periods during William's adult life; but his stipulation against recognition went further than any question of anti-popes; it covered all elections to the papacy.

Then, no papal bulls or briefs were to be published in England until they had been seen and approved by the king. Further, with a view to preventing resort to Rome or elsewhere for planning things detrimental to king or kingdom, no ecclesiastic of position could leave the realm without the king's permission.

The relations of the Church with the Crown.

So much for external safeguards. For internal safeguards, the Church of England could hold councils, under the primate, only by permission of the king. When assembled, the council of the

Church could not pass into force any laws or canons which had not been previously approved by the king. There was no appeal from the council to any foreign court or jurisdiction.

In an age when the mysterious powers claimed by the clergy were liable to serious misuse or misapplication, it was necessary to protect the great lay officers from impediment in the form of severe ecclesiastic penalties. No bishop was to deal with or punish any of the king's vassals, even for grievous crime, without the king's precept.

Pope Pascal's protest.

Neither externally nor internally were these mere paper safeguards, as the course of the history of Church and State shews. An instance may be given. Pope Pascal II. (1099-1118) addressed a letter to the king, Henry I., and the bishops in the time of Archbishop Ralph of Canterbury (1114-1123), the third Norman Archbishop. He declared that in the division of the world for the labours of the Apostles, Europe was given to St. Peter and St. Paul, and that from them the authority had come to the Bishops of Rome as their vicars. Acting with the authority of St. Peter and St. Paul, he complained that the English king and bishops, without consulting him, managed in England the affairs even of bishops; did not allow appeals to Rome; held synodal councils without reference to him; presumed to translate bishops, a thing absolutely prohibited without authority and licence from him. "If," he concluded, "you determine to remain in your obstinacy, we, according to the Gospel saying and the Apostles' example, will shake off the dust of our feet against you as deserters from the Catholic Church, and will hand you over to the Divine judgment, as the Lord said, 'He that gathereth not with me scattereth, and he that is not with me is against me.'" In a previous letter of complaint Pascal had reproached the king, to whom the letter was addressed, with the fact that neither the letters nor the messengers of the Pope could be admitted to the kingdom without the king's command. Nothing from England was submitted to his judgment.

The king's action.

Henry thereupon consulted the bishops assembled at Westminster, and also the Great Council then in session there, as to how he should act in this matter. It was not the only cause of tension. A papal legate, a Cardinal, had recently visited the Norman dominions of the king and had excommunicated the Norman bishops who had disregarded his third summons to attend a council. In his English dominions Henry had very early in his reign, in concert with Anselm, sent away unrecognised a papal legate who had landed at Dover and announced that legatine authority over the whole of Britain had been conferred upon him. This, Eadmer says, caused wonder throughout England, for all men knew it to be an unheard-of thing that anyone but the Archbishop

of Canterbury could exercise apostolic functions over them. Guido, who was an important person, the son of the Duke of Burgundy, and afterwards Pope as Calixtus II, went away, in the words of Eadmer, acknowledged as legate by no one, and having not exercised the office of legate in any way. The offence of excommunicating the Norman bishops had very greatly disturbed the mind of the king. It appeared to him that the Pope was breaking the arrangements made with his father his brother and himself. The advice given him by those whom he consulted was that he should send messengers by whom he could more surely than by letter tell the Pope his will on various points. The blind bishop of Exeter was sent. Eadmer does not carry the affair any further. Pascal died two years later.

Canons made at the six councils held by Lanfranc.

Before passing on to later times we must return to William and Lanfranc, and see what was done in their time at the councils summoned by the archbishop under sanction from the king. It is not interesting only but important to note the use made of the king's permission to enact canons through a series of years, especially when we remember that all of these canons which have not been abrogated by statute or voided by disuse are in force still.

A Council was held in London, at St. Paul's, in 1075. The two archbishops were there and thirteen bishops, abbats also, and many persons of religious orders. They stated that the custom of holding councils had for long fallen into disuse in England—*multis retro annis in Anglico regno usus conciliorum obsoleverat.* It was therefore thought right to re-enact some things which were known to have been defined in ancient canons. It may be remarked in passing that important councils had been held in the later times of Anglo-Saxon England. In A.D. 960 there was a very large number of canons issued by Archbishop Dunstan and King Edgar, with minute rules on the conduct of services and other matters connected with the work of the Church. In 994 a great book of ecclesiastical laws was issued in English and Latin. When Archbishop Alphege was murdered, King Ethelred issued ecclesiastical laws. As late as 1052, as we have seen, Edward the Confessor issued ecclesiastical laws, which William confirmed.

The Council in 1075 decreed that bishops must have their seats in cities, not in country places. This was in accordance with decrees of Popes Leo and Damasus and the Council of Sardica. For the present, Hermann of Sherborne must move to Salisbury, Stigand of Selsey to Chichester, Peter of Lichfield to Chester. The case of others was left till audience could be had of the king, who was fighting abroad at the time. That postponement on the part of the Council of the Church is eloquent of the real position. Another decree has a human touch, quite unlike the sort of thing we usually get in a canon: "With a view to curbing the

improprieties of certain indiscreet persons, it is ordered that no one but bishops and abbats shall speak in the Council without the permission of the metropolitan." Marriage within the seventh degree of consanguinity or affinity was forbidden. That means that second cousins once removed may not marry without dispensation, but third cousins may. No cleric is to judge a man to be slain or dismembered, or to lend his authority to persons so judging; this was in accordance with ancient canons. In obedience to this principle, the bishops used to leave the House of Lords, in cases of impeachment, before the vote "guilty or not guilty" was taken, on which depended the shedding of blood. It is claimed that by thus leaving the House, and not fulfilling the whole duty of peerage, they ceased to be peers and became lords of parliament.

At a Council held by Lanfranc at Winchester in 1076 it was ordered, among other things, that no cleric bear secular arms, and that bishops hold councils twice in each year. The decrees of this Council are headed in one of the Chronicles with the words "This is the institution of penance"; the seventh decree is "That bishops and priests invite laymen to penance."

At another Council at Winchester it was ordered that no one hold two bishopries; that altars be of stone; that the Sacrament be not of beer, nor of plain water, but only of water with wine mixed—*solummodo aqua vino mixto*, a remarkable phrase; that masses be not celebrated in churches not consecrated by a bishop*; that the bodies of dead persons be not buried in churches †; that chalices be not of wax or wood; that for crimes bishops alone assign penance; that each bishop hold a synod every year.

Several of these are found in Dunstan's code of A.D. 960, an example of the direct influence of Anglo-Saxon Church law upon the English Church in Norman and later mediaeval times, and, indeed, in our own times. On the other hand, there are small differences introduced by the Norman Council of the Church which indicate a desire for greater strictness. In the decree marked* the Normans struck out from Dunstan's law the proviso "Except in case of the extreme illness of anyone"; our modern practice is Dunstan's not Lanfranc's. In the decree marked † they struck out from Dunstan's law "unless his life had been so pleasing to God, as far as man could judge, that he was worthy of it." Here, again, the Anglo-Saxon feeling eventually prevailed. The mention of a chalice of wax has a curious explanation. Dunstan had said it must not be of wood, it must be molten, that is, of metal. The Norman temperament saw that wax as well as metal could be molten and must be barred, a very strict following of Dunstan's words.

At another Winchester Council it was decreed that priests living in towns and villages, having wives, are not compelled to put

them away; not having wives they are forbidden to marry. Bishops must for the future not ordain priests or deacons without their first declaring that they have not wives. It was at this Council that the important step was taken of declaring the civil contract to be not sufficient to make a lawful union. "Let no man give his daughter or kinswoman to anyone without sacerdotal blessing; if he does, it shall be judged not a lawful union but a union of fornication." This was probably disciplinary, to prevent the secret marriage of priests. It would be difficult to get a priest to run the risk of punishment for the sake of giving sacerdotal blessing to a brother priest's wedlock. Lanfranc's canon appears to contradict the otherwise universal view that the union by civil contract made a valid marriage, though unblessed and therefore deprecated by the Church. At the Council of Trent it was only given as advice that after the civil contract of marriage the parties should not cohabit until they had received the blessing of the Church.

At a Council in London in 1078 the disciplinary decree was made which forbids the reception of Holy Communion by those who have not received the rite of Confirmation. This was due, no doubt, to neglect of Confirmation.

That summary gives a fair view of the nature of the canons and decrees made by the Norman bishops and abbats and other clerical persons in taking charge of the Church of England. It left their hands still the same old Church of the English, with full recognition of its old canons its old episcopal laws.

Controversies with the papacy.

The question of the relations between Church and State in England in the Middle Ages is perpetually obscured by controversy between the Pope and the State; sometimes, indeed, between the Pope and the realm of England, Church and State united. With these controversies we have not for our present purpose any concern. We can pick out here and there important differences between Church and State, mainly due to the separation between the two.

Differences between Church law and State law in England.

No matter of law can well have further reaching effects than the laws affecting the legitimacy of children. The old Roman secular law allowed a man and woman who had children born to them out of wedlock to legitimate them by marrying at any time before the death of either. It is now the law in Scotland. It was the canon law of the West. The English ecclesiastical law under the Normans conformed itself to the canon in the case which came under its jurisdiction, the question, namely, whether a man thus tardily legitimated needed a dispensation as illegitimate before admission to Orders. But the English secular courts stuck to the old English custom in all matters of succession to a freehold all such matters coming before the secular court. It was when, the proposal was made at the Council of Merton in

1236 that children thus legitimated should succeed to freeholds, that the English barons made their famous declaration *Nolumus legis Angliae mutare*, We will not change the laws of England. As an example of the strictness of the English law in regard to succession to freeholds it may be mentioned that when the Act was passed enabling clergy to marry, it was found later that the law was not effective to render the children of the marriage capable of succeeding of right to the parent's freehold, and a supplementary Act had to be passed for that purpose.*

Another example may be taken from the important question of patronage, the advowson of an ecclesiastical benefice. The patron of an ancient benefice is the successor of the original creator or creators of the endowment, and as such his consent is required to proposed dealings with the property. His one exercise of his right of advowson is to appoint a suitable cleric to hold the benefice, who thereby becomes the holder of a freehold in abeyance. This is one of the standing arguments against the property of the Church being or ever having been the property of the State. Being real property, the patron's heir succeeded to the advowson, with its right of appointment to the benefice; and if a patron wished to part with the advowson, he could sell it. A decretal was issued by Pope Alexander (A.D. 1159-1181)—a pope who had the unusual distinction of a series of four hostile competing popes kept up regularly from 1159 to 1180—declaring that any cause relating to the law of patronage of benefices was so conjoined and connected with spiritual causes that it could be determined by ecclesiastical judgment alone. This decretal was addressed to our King Henry II. There is evidently a good deal of reason in it. It had, in fact, been the practice in England up to that time. But the law of patronage dealt with claims and successions to freeholds of large value in themselves, and thus affected many important lay interests. Henry II. and his advisers looked into the matter, and declared the right of patronage to be in the jurisdiction of the temporal courts. From that time the courts of the Crown took cognisance of all suits touching a patron's right of patronage brought by a claimant of the right, and dealt sternly with any ecclesiastical court that interfered. So completely was this invasion of the Roman canon law accepted, that in the year 1261, when Archbishop Boniface was asserting against the Crown the immunity of clergy from the temporal courts in its very fullest sense, he specially disclaimed any purpose of challenging the royal cognisance of suits of patronage.

National investigation of the relations between Church and State.

The mention of Boniface has carried us a century beyond the point at which the fullest investigation of the relations between Church and State was made by the highest authorities of the

* 2 & 3 Edw. 6, c. 21, and 5 & 6 Edw. 6, c. 12.

land. To that investigation we must now turn, but not with a view to entering upon the endless details—mostly irrelevant to our present purpose—of the quarrels between Becket and Henry II. Anselm's disputes with the king had been upon spiritual grounds, and we have seen their outcome in the compromise on investitures. Becket's disputes with his king were of a different character.

We have seen Henry I. dealing in wrath with the letters of Pascal II. in A.D. 1114, and settling wisely the difficult question of investiture. In later time, when vehement controversy arose as to the true constitutional relations of Church and State, it was this same king's reign that was taken as the true exposition of these relations, the completed work of William and Lanfranc.

Becket's quarrel with Henry II.

Archbishop Becket began his contentions on the part of the Church, as against the action of the State, by a refusal which had a good deal of right in it. Even if that statement is disputed, we can at least understand his attitude in the matter. It had been the custom for holders of land to pay an amount of money, calculated on the size of their holding, to the sheriff of the county, for county management as we might put it. The king, who was doing much to organise government, desired to convert this customary contribution into a fixed tax, entered in the king's books, probably with a view to management of county business by officials of his own. Becket declared that he was quite ready to make contribution to the county expenses if the county was well managed, but if it was demanded as a fixed tax from his lands and from the rights of the Church, not one penny. That terminated the close friendship between Becket and his king.

Tension between the ecclesiastical courts and the lay authority.

Later on, an acute question arose on the instruction given in the document which separated the ecclesiastical from the secular courts. That important document instructed the lay power to enforce the temporal penalties imposed by the ecclesiastical courts upon lay persons. The lay power was indisposed to carry out this instruction with any spirit. The lay power found itself barred from judging clerical malefactors, and saw them too leniently judged by the ecclesiastical courts; it would naturally not give any help it could avoid giving to the ecclesiastical court by enforcing upon lay persons its sentences, possibly in fact excessive, and almost sure to be so considered by a jealous laity. It should be mentioned in this connection that not all the heinous offences charged against the clergy were charged—as might in modern phraseology be supposed—against bishops priests and deacons. There were in mediaeval times no less than eight different grades of men in "orders." Acolytes, exorcists, lectors, and doorkeepers, were men in "orders," and against them no doubt many of these heinous offences were charged. The other four grades were in "holy orders," namely,

bishops, priests, deacons, and sub-deacons; they should not be credited with the whole bulk of offences. The distinction was clearly marked at the time when the "benefit of clergy" was being gradually restricted by Acts of Parliament under Henry VIII. Immunity from the judgment of secular courts was taken away from those in "minor orders" first, and some years afterwards from those in "holy orders."

Immunity of the clergy.

Henry II. was entering upon a reform of the criminal law. The immunity of the clergy—in the full sense of the word "clergy" described above—was evidently a matter that needed very full consideration and at least some measure of reform. The king called a council of bishops and abbats for October, 1163, and propounded a compromise, addressing himself to "my lord of Canterbury." His words are reported by Herbert of Bosham as follows: "I am bent on maintaining peace and tranquillity throughout my dominions, and much annoyed I am by the disturbances which are occasioned through the crimes of the clergy. They do not hesitate to commit robbery of all kinds, and sometimes even murder. I request therefore the consent, my lord of Canterbury, of yourself and of the other bishops, that when clerics are detected in crimes such as these"—they shall be dealt with in such-and-such a way. The precise force of the king's proposal is obscured by the language put into his mouth. The probable suggestion was that they should be brought in the first instance before a temporal court, if guilty should be remitted to the ecclesiastical court to be degraded from their orders, and then, as being no longer in orders, should be punished by the lay court as laymen. Becket is said to have taken the view that the degradation was the punishment for their offence, and they ought not to be punished a second time for the one offence. The king waived this point, and mentioned other complaints against the ecclesiastical courts, but contented himself with asking an assurance from the bishops that they would abide by the customs which regulated the courts and the rights of the clergy generally, as they had been allowed in the days of his grandfather. The bishops were ready to say yes, but after private debate Becket persuaded them to say yes with a proviso, "saving our order." The council broke up.

The Constitutions of Clarendon.

Four months later, in January 1164, the king called a council at Clarendon, the whole body of the prelates and lay lords. The archbishop again declined to accept the customs in use under Henry I. unconditionally. It was then ordered that enquiry should be made as to what the customs actually were, and they should be committed to writing. The enquiry was made by the archbishops, bishops, earls, barons, and the most noble and ancient men of the kingdom. The document was drawn up by two men

learned in the law. It contained the famous Constitutions of Clarendon, which set forth the usages of Henry I.'s time on the disputed points, and in some cases shew the developments which had taken place in the interval. As there was no dispute about the conditions of holding councils and making canons, those matters are not mentioned.

Dr. Stubbs's summary may with advantage be quoted :—

> "They concern questions of advowson and presentation, churches in the king's gift, the trial of clerks, the security to be taken of the excommunicated, the trial of laymen for spiritual offences, the excommunication of tenants-in-chief, the licence of the clergy to go abroad, ecclesiastical appeals, which are not to go further than the archbishop without the consent of the king, questions of title to ecclesiastical estates, the baronial duties of the prelates, the election to bishoprics and abbacies, the right of the king to the goods of felons deposited under the protection of the Church, and the ordination of villeins."

It may be well to give in full the constitution affecting the disputed point as to the relation between the king's court and the ecclesiastical court. We may perhaps find in it the explanation of the confused language of Herbert of Bosham :—

> III.—" Clerks accused of any crime shall be summoned by the king's justice into the king's court to answer there for whatever the king's court shall determine they ought to answer there, and in the ecclesiastical court for whatever it shall be determined they ought to answer there, yet so that the king's justice shall send into the court of holy Church to see in what way the matter shall there be handled, and if the clerk shall confess or be convicted the Church for the future shall not protect him."

After many changes of attitude and many forms of coercion, Becket eventually accepted the constitutions without proviso. When it came to the sealing he at first refused to attach his seal, but we are told that it was in the end attached.

The formative policy of Edward I.

We naturally look to the reign of Edward I., one of our great law-givers, to tell us something of the general trend of the relations between Church and State.

A dramatic scene had been enacted in the year 1253. In the great Hall of Westminster, in the presence of King Henry III., the four great earls, and the other estates of the realm of England, Boniface the archbishop and thirteen bishops, apparelled in pontificals, with tapers burning, denounced the sentence of excommunication and curse against all who spoil the Church of her right or violate the liberties granted to the archbishops, bishops, and other

prelates of England, and to the earls, barons, knights, and other freeholders of the realm by the Charter of the common liberties of England and the Charter of the Forest. The clergy thus sheltered themselves under the common liberties granted to all the people of the realm, as contrasted with reliance on the liberties of their order.

This method of strengthening the hands of the State was evidently found effectual, for we find that Edward I. largely availed himself of it. In 1297 and 1306 he passed Acts requiring the archbishops and bishops to have the two Charters read twice a year in their cathedral churches and in all their parish churches with denunciations of curses against all who act contrary to the Charters. And if any of the bishops be remiss in this respect, the archbishops shall compel and distrain them to the execution of their duties. It is matter of dispute whether this was mere obedience to the civil power or consensual action on the part of the spiritual estate of the realm.

On the other hand, very grave differences between Church and State came to a head in this reign.

The Church to contribute to the maintenance of the State.

Edward's policy was to make the property of the Church, which had been to a considerable degree exempt from fixed charges, take its full share in meeting the expenses of the State. In 1282 he determined to have a subsidy voted by the clergy. He proceeded by way of a council in each province, to which the sheriffs were to summon the laity, the archbishops the clergy. Peckham of Canterbury was bidden summon his suffragans, with the heads of religious houses and the proctors of the deans and chapters; but no mention was made of the parochial clergy. The Council met at Northampton in January 1283, and a request was made for a subsidy. It was replied that a subsidy could not be granted, because the parochial clergy were not represented. The clerical assembly was thereupon dissolved. Peckham summoned a Convocation for May, the bishops being now instructed to bring two representatives of the clergy from each diocese. This Convocation granted a small subsidy, a rate of one-twentieth, but very unwillingly, and with a full statement of clerical grievances, financial and otherwise.

New form of demand of subsidy.

In 1294 Edward departed from the regular custom of asking for a subsidy without mentioning an amount; he demanded a subsidy, and put it at a moiety of all ecclesiastical property. The king's judges had declared it to be for the common good that the king should be considered as above the customs of the kingdom. The clergy yielded to the demand, which was probably made in this unconstitutional form in order to create a constitutional claim before the Pope. Boniface VIII. made the universal claim which was then impending. The papal bull

The bull *Clericis laicos.*

"*Clericis laicos*" declared that over ecclesiastical property lay persons have no power whatever. "Under no title plea or name was any tax to be levied on any property of the Church without the distinct permission of the Pope. Every layman of whatever rank, emperor, king, prince, duke, or their officers, who received such money was at once and absolutely excommunicate; they could only be absolved, under competent authority, at the hour of death. Every ecclesiastic who submitted to such taxation was at once deposed and incapable of holding any benefice." After this bull had been read in the cathedral churches the clergy met in provincial synod and by a majority refused all concession. The Chief Justice of the King's Bench thereupon announced that no legal representative of the clergy of any degree could be heard in the King's Court, but justice would be done against the clergy if any one demanded it. This put the whole of the clergy outside the law, and any one who pleased seized their horses or anything else they could lay hands on; there was no redress. All the property of the archbishop, Robert of Winchelsey, was seized for the king's own use; not a saddle horse was left in his stable. The sturdy beggars on the roads made the clergy change clothes with them; if they resisted they were seized for causing disturbance on the king's highway. The archbishop took charge of a parish in the country, and lived on the alms of the parishioners. Eventually all of the clergy, except the archbishop and the Bishop of Lincoln (Sutton) gave way, resorting to curious devices for letting the collectors take the money unseen, so as to keep clear of the terms of excommunication under the papal bull.

The clergy outlawed.

Statutes of mortmain.

Edward I., in carrying out his policy of making the property of the Church take its full share in meeting the expenses of the State, passed no less than seven statutes dealing with lands given to religious corporations. Such lands were said to be in the dead hand, mortmain, because the owner, being a corporation, did not die, and therefore there were no succession duties payable. Magna Carta had met one great evil in this connection, by forbidding the owners of lands to make them over technically to a religious corporation and then hold them of that corporation as ecclesiastical property free from succession duty. *Ecclesia Anglicana libera sit*, no doubt; but not to trick the State in that way. Edward's legislation on this subject was very vigorous. Its principle is in full force still in cases to which it applies, as for instance universities and colleges, which have to purchase licences in mortmain when additional lands are given to them.

While these are illustrations of the general course of things as between Church and State in the reign of Edward I., the great permanent event of the reign, for our present purpose, was the calling of Convocation.

The Convocations of the clergy.

In the reign of Edward I. the great body of the clergy was regarded as an estate of the realm, with taxable property and class interests. In A.D. 1295 each of the bishops was instructed by the king's writ to bring with him to the Great Council the dean, the archdeacons, one proctor to represent the chapter of the cathedral church, and two proctors to represent the whole of the clergy of the diocese,* to treat, order, and act with the king and the other prelates, chief men, and other people of the realm. This spiritual estate of the realm, thus summoned, claimed to tax itself, and to sit apart from the other estates for this purpose. The separation from the rest of the Great Council of the nation on so important a matter as taxation naturally caused a loss of influence in Parliament. On the other hand, the State necessity of taxation grants from the clergy ensured the right of the clergy to meet in Convocation whenever the Great Council was summoned for the transaction of business. The resulting isolation of the representative body of the clergy was due to the action of the Church, not of the State.

Church and State combined against the papacy.

In the years 1351 and 1353, under Edward III., Church and State combined against the encroachments of the Popes. The first Statute of Provisors forbade the Pope to forestall patrons of benefices in their right of presentation to a benefice, by "providing" an incumbent for it who should succeed when in course of time it became vacant. The first Statute of Praemunire, in order to prevent causes being taken from the English courts into the papal court, declared any one an outlaw who lodged a plea in any court not within the realm, and did not after warning take his plea into the king's court.†

In 1393 a combined stand was made, at the instance of the Commons, under Richard II., against the continued invasion of the common rights by the Popes. It took the form of a still stronger Statute of Praemunire. The preamble sets forth that the Commons of the realm have declared the action of the Popes in calling causes to Rome to be "in destruction of the sovereignty of our lord the king his crown his regalty and of the whole realm." The Commons have declared that they are with the king in all points, to live and to die. They have requested him to examine all the lords in the parliament as well spiritual as temporal, severally, and all the states of the parliament, how they think of the cases aforesaid which be so openly against the king's

* In the Province of York the archbishop, in A.D. 1279, summoned the archdeacons to meet him at Pontefract with two persons of dignity and one dean of the archdeaconry (presumably a rural dean) to agree upon a subsidy to the king. Each archdeaconry of that province still sends two proctors to the Convocation.

† The writ was addressed to the sheriff, and began with the words *Praemunire facias*, You shall cause warn (or cite) so-and-so that he appear before us at such a date.

crown and in derogation of his regalty, and how they will stand in the same cases with our lord the king in upholding the rights of the said crown and regalty. The preamble proceeds to state that each temporal lord answered by himself, and each lord spiritual being present and the proctors of such as were absent, that they will and ought to be with the king in these cases as they be bound by their legiance. Whereupon the severe Statute, enacting forfeiture against such as contravened it, was passed into law.

Heresy.

The action of the State in connection with charges of heresy must be mentioned, summarily, here. The Act 5 Richard 2, stat. 1, c. 6 was due to the growing force of Lollardy. It enacted that when the prelates certified heretical preachers, the Chancellor should cause commission to be made to the sheriffs to arrest such and their fautors and hold them in strong prison till they be justified according to the law and reason of holy church.

Stronger measures were taken by Richard's successor Henry IV, whose accession to the throne was in part due to his promise to be severe with the Lollards. The Act 2 Henry 4, c. 15, set forth that heretics going from diocese to diocese did utterly contemn and despise the diocesans, and their jurisdiction spiritual, and the keys of the church with the censures of the same. The prelates and the clergy and the commons of the realm in the same parliament prayed the king to provide a convenient remedy. The heretics are to be arrested by the diocesan, proceeded against according to the canons, if convict be kept in prison and fined at the discretion of the diocesan. If they refuse to abjure, the sheriff of the county—when so required by the diocesan—and the mayor and sheriffs or bailiffs of the town, shall set them in a high place to be burned before the people. The Act 2 Henry 5, stat. 1, c. 7, added forfeiture of lands goods and chattels.

Death by burning.

The Act 25 Henry 8, c. 14, finds vagueness of terms in 2 Henry 4, c. 15, and finds that because it had no definition of heresy, many things had been declared heresy as being agains' canons, which were laws merely human and some of them against the laws of the land. That Act was therefore repealed, and the Acts of 5 Richard 2 and 2 Henry 5 were revived, and other processes were enacted, leading up to the same penalty of death by burning. This Act of Henry 8 contains a statement that the great number of the king's majesty's subjects, having little or no learning nor knowledge of letters, have been put in opinion that to speak against the power or authority of the bishop of Rome is heresy; it is therefore enacted that such speaking be not deemed reputed accepted or taken to be heresy.

Death penalty taken away.

The Act 29 Charles 2, c. 9, enacts that the writ commonly

called *Breve de Hæretico comburendo* be from henceforth utterly taken away and abolished.

We now come to the Reformation Statutes of Henry VIII. Reformation statutes.

The first statute to which we may turn has a preamble so remarkable for its vigour and clearness, and for the high character attributed to the Church of England, that it is worth printing in full so far as it relates to the Church.

For restraint of appeals [to Rome] (24 Henry 8, c. 12):— Appeals to Rome.

"Where by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that this realm of England is an empire and so hath been accepted by the world, governed by one supreme head and king having the dignity and royal estate of the imperial crown of the same; unto whom a body politic, compact of all sorts and degrees of people divided in terms and by names of spirituality and temporalty hath been bounden and owen to bear, next to God, a natural and humble obedience: he being also institute and furnished, by the goodness and sufferance of Almighty God, with plenary whole and entire power pre-eminence authority prerogative and jurisdiction to render and yield justice and final determination to all manner of folk, resiants or subjects within this his realm, in all causes matters debates and contentions happening to occur insurge or begin within the limits thereof, without restraint or provocation to any foreign princes or potentates of the world: the body spiritual whereof having power, when any cause of the law divine happened to come in question or of spiritual learning, then it was declared interpreted and shewed by that part of the said body politic called the spiritualty, now being usually called the English Church [*Ecclesia Anglicana*], which always hath been reputed and also found of that sort that both for knowledge integrity and sufficiency of number it hath been always thought and is also at this hour sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts and to administer all such offices and duties as to their rooms spiritual doth appertain, for the due administration whereof, and to keep them from corruption and sinister affection, the king's most noble progenitors and the antecessors of the nobles of this realm have sufficiently endowed the said Church both with honour and possessions: and the laws temporal, &c."

Next, as to Dispensations (25 Henry 8, c. 21). Dispensations.

When the power of the Pope was done away with in England

there must still be some one who should have power to grant dispensations. Two simple examples of a dispensation may be given. A "marriage licence" is a dispensation from the requirement of banns, a licence of non-residence for an incumbent is a dispensation from the law of residence. It was enacted by 25 Henry 8, c. 21, that the Archbishop of Canterbury should grant such dispensations as the Pope had been wont to grant, "not being contrary or repugnant to the Holy Scriptures and the laws of God. No dispensation "in cases unwont and not accustomed to be had or obtained at the court of Rome" may be granted unless the king or the council has been advertised and has approved. No dispensation the tax for which at Rome has extended to the sum of four pounds or more shall be put in execution until it has been confirmed under the great seal; when the tax at Rome has been under four pounds, the archbishop's seal suffices. The charges were not to be diminished. Of the four pounds and above, two-thirds is to go to the king and his officers, one-third to the archbishop and his officers. Considerable formalities are appointed for such dispensations, and are still in force; the cost is heavy and the cases are very rare. In the case of taxes of less than four pounds and not less than forty shillings, a similar division is enjoined; below forty shillings each gets half. It scarcely need be said that in these days neither king nor archbishop receives personally any portion of these fees; nor do the bishops in cases where they have the power to grant dispensations.

Submission of the clergy.

Next, the Submission of the Clergy (25 Henry 8, c. 19). Courts held in England by the representatives of the popes, called the legatine courts, had become an important part of the ecclesiastical judicature of the country. Wolsey was the papal legate in the time of Henry VIII., with the king's own sanction, and he was the head of the legatine court. It was a foreign court, and therefore resort to it was a direct violation of the terrible Statute of Praemunire. When Henry was driven to an open rupture of relations with the Pope, he set in operation this statute against Wolsey and the clergy. The Convocations met. They had no defence, except that their resort to the legatine court of Wolsey had never before been objected to by the king. They were at the king's mercy. He imposed heavy fines, £100,000—an enormous sum in those days—on the Convocation of Canterbury and £18,840 on the Convocation of York, and he required them to agree to conditions which were in accord with those formulated by William and Lanfranc, namely, that they could meet only by permission of the sovereign, and could promulgate only such canons as he had previously sanctioned. On 15th May 1532, the Lower House signed the king's draft of conditions, undertaking not in future to put in ure (use) any canons save such as the king had sanctioned; and, with regard to canons already existing, to have

them submitted to examination for the abrogation and annulment of such as are judged to be detrimental. On the following day the Upper House signed the draft, but the prelates saw that the undertaking was far too wide, and they inserted the word *new* in the undertaking not to put in ure any canons save such as the king had sanctioned. The insertion was accepted by the king, and the "submission" was complete. Two years later it was thrown into the form of an Act of Parliament, 25 Henry 8, c. 19, and thus received statutory authority. The Act retains the word *new*, and that has a very far-reaching effect. Inasmuch as the examination of the ancient canons never came into force, the old canon law is still church law in England. Thus, for example, not only Lanfranc's canons and many others, but the whole of the legatine constitutions of Cardinal Otho and Cardinal Othobone (A.D. 1237 and 1268) are still in force save where abrogated by statute or voided by disuse. This exception appears to apply only to such of the Cardinals' constitutions as relate to the enforcement of celibacy and the government of monks and nuns; the rules of attire of the clergy when not ministering in church are naturally in some respects out of date, but in other respects they are excellent. An Inverness cape is more in accordance with Otho and Othobone than is a great coat. The general run of their canons is matter of course among us to-day.

"New" canons.

Next, the Supremacy (26 Henry 8, c. 1). The king's grace to be authorised supreme head.

Supremacy.

> "Albeit the king's majesty justly and rightfully is and ought to be the supreme head of the Church in England, and so is recognised by the clergy of this realm in their Convocations [*quantum per Christi legem licet*, the Convocation had insisted on inserting and the king here omits], yet nevertheless for corroboration and confirmation thereof, and for increase of virtue in Christ's religion within this realm of England, and to repress and extirp all errors heresies and other enormities and abuses heretofore used in the same: be it enacted by authority of this present parliament that the king our sovereign lord, his heirs and successors, kings of this realm, shall be taken accepted and reputed the only supreme head in earth of the Church of England called Anglicana Ecclesia . . . . : and that our said sovereign lord, his heirs and successors, kings of this realm, shall have full power and authority from time to time to visit repress redress reform order correct restrain and amend all such errors heresies abuses offences contempts and enormities whatsoever they be which by any manner spiritual authority or jurisdiction ought or may lawfully be reformed repressed ordered redressed corrected restrained or amended most to the pleasure of Almighty God the increase of virtue in Christ's religion and for the

conservation of the peace unity and tranquillity of this realm, any usage custom foreign laws foreign authority prescription or any other thing or things to the contrary hereto notwithstanding."

The correspondence of Bonner and Gardiner and their published writings shew that those two stalwart upholders of the old order were satisfied that the king did not claim spiritual position or power which went beyond the Convocation's limitation, *quantum per Christi legem licet.*

Three eras.

It has been remarked by an acute writer that the evolution of the relations of Church and State may be divided into three periods: the era of Unity, extending from the conversion of England to the Reformation; the era of Uniformity, from the Reformation to the Revolution of 1688; and the era of Toleration, from the Revolution down to the present time. We now reach the second of these periods.

Causes of tension removed.

The distribution of the property of the monasteries, scandalous in its lack of principle and disgraceful in its wastefulness, had removed one of the causes of tension between Church and State. The sarcasm of the old Norman-French poem,

> "The Kings and apostolic Popes no other counsel hold,
> Than how they best may take the clergy's silver and their gold,"

had lost its force, so far as the immense share of the nation's wealth held by the monasteries was concerned. Much of the parochial endowments had been lost in the process. The plundering of the property of the episcopal sees by the Council under Edward VI. and in a less degree by the sovereign in Elizabeth's reign, was bad enough, but it was limited in the area of its exercise. Mary had contented herself with an Act assuring in their tenure all who had acquired monastic property, and inflicting penalties on any who called them in question. On that condition she was accepted by the great men of the old faith; a papal bull had specially confirmed some of them in their plunder.

A second cause of disturbance and tension had disappeared. The interventions and the financial demands of the Pope had become a thing of the past. There was a serious set-back in this respect for a few years in Mary's reign.

A third great and abiding cause of tension, the action of the ecclesiastical courts, continued to exist. It was eventually removed, as we shall see, by a series of statutes in the nineteenth century.

The period on which we now enter, described as the Era of Uniformity, built up fresh causes of difficulty. To deal with these is the main business of the Archbishops' Committee. As we

are now on more familiar ground, crowded with known detail, the main points connected with our inquiry may be stated succinctly.

The idea of uniformity of faith, ritual, and practice, is attractive. But the attempt to realise it by means of pains and penalties more than takes away the attraction. In the ages which are called the dark ages, when the vast majority of people had no books and could not read, and did not think deeply on abstract questions, apparent uniformity was a comparatively simple thing. But the drastic enforcement of uniformity came just at a time when the printing presses had been at work for more than a hundred years, and when almost all points of doctrine had been openly and freely discussed. Or again, uniformity of belief on the cardinal doctrines of the Catholic Faith is one thing, uniformity of belief on all the points dealt with in the Thirty-nine Articles is another and a very different thing. When you come to detailing definitions on a large number of disputable points, voluntary uniformity of belief is out of the question, and compulsory uniformity is tyranny. Ritual in itself stands on a different plane; but inasmuch as ritual depends upon and sets forth doctrine, you get back to the same difficulty in the end. It is clear that an era of uniformity must be an era of many searchings of heart and of much disturbance.

Edward VI.

The reign of Edward VI. was a disaster to the Church in its relations with the State. The self-seeking majority of the boy-king's Council acted as though in them was vested the Royal Supremacy of Henry VIII., unfettered by the limitations which that sagacious monarch recognised. They passed the first Act of Uniformity, 2 & 3 Edw. 6, c. 1, making the "First Prayer Book of Edward VI." the one and only legal service book of England. There is not clear evidence that the statement which they made in letters in the king's name was true, to the effect that the book was set forth by the learned men of the realm in their synods and convocations. Without other evidence, the assertion of the Council has little value. The preamble to the Act does not claim that the Book had been approved by or submitted to the convocations, and many of the bishops voted against it in the Lords. The Book in itself deserves high praise.

Act of Uniformity. First Prayer Book.

Ordinal.

In 1550 an Act directed the appointment of six prelates and six other learned men to draw up a Form of Ordination of Bishops, Priests, and Deacons, to be laid before the Council and set forth under the great seal. This was the origin and the authority of the English Ordinal.

Second Act of Uniformity. Second Prayer Book.

Two years later, a second Act of Uniformity was passed, ordering the sole use of a Book of Common Prayer gravely altered from the original book in a puritan direction. The

Ordinal attached to this book was the Ordinal of 1550 shorn of wholesome symbolic ceremonial. It is held that this Book had not been before Convocation; but as in the case of the First Book there are differences of opinion on the point, important as it is.

Penalties.

Both of these Acts of Uniformity imposed ecclesiastical penalties on the non-use of the Book. The second Act imposed ecclesiastical penalties upon lay folk who did not attend their parish churches when the Book was used, and civil penalties of imprisonment upon any who were present when any other form of common prayer was used. Thus new offences were created by the State in connection with the services of the Church. Recusancy and separatism were brought into the open.

Forty-two Articles.

An Order in Council in 1551 had directed the drawing up of a Confession of Doctrine, to be adopted by the English Church as expressing the orthodox view on the subjects dealt with. Forty-two Articles were drawn up. They were ratified by the boy-king and published by his command in 1553. Here again there are differences of opinion among writers, on the question whether the statement of the Council that they had been submitted to Convocation is true. There are serious doubts of the veracity of those who exercised the prerogative of the Supreme Head of the Church in Edward's reign.

Mary.

Fortunately, it is not necessary to enter upon the reign of Queen Mary. She recognised the complete supremacy of the Pope, and has in consequence been aptly described as the first Roman Catholic sovereign of England.

Elizabeth.

Elizabeth's general policy with regard to the relations of Church and State appears to have been to restore to the Church its comparative independence of action, reserving to herself, as supreme governor of the realm, a power of guidance of ecclesiastical affairs behind the scenes, while keeping clear of public responsibility for action taken by the Church.

Royal Supremacy.

The first statute of Elizabeth's reign, 1 Eliz., c. 1, was "An Act to restore to the Crown its ancient jurisdiction in ecclesiastical matters." It declared the sovereign to be the only supreme governor of the realm, as well in spiritual or ecclesiastical things or causes as in temporal. That was a very different matter from 26 Henry 8, c. 1, which declared the king the supreme head in earth of the Church of England, called *Anglicana Ecclesia*. It annexed ecclesiastical jurisdiction to the Crown (sec. 17), and authorised the sovereign to assign commissioners to exercise this ecclesiastical jurisdiction (sec. 36). It made the concurrent voice

of the Convocations necessary in any parliamentary declaration of heresy. The Commissioners could not judge anything to be heresy but such as has been so determined by the authority of the canonical scriptures, or by the first four general councils or any of them, or by any other general council in accordance with the express and plain words of the canonical scriptures, or such as shall hereafter be so judged by the high court of parliament with the assent of the clergy in their Convocation. The Court of High Commission became more and more unpopular as time went on. It had much to do with the overthrow of the monarchy. Charles I. abolished it in his sixteenth year, but it was too late, the mischief was done.

Third Act of Uniformity. Third Prayer Book.

Elizabeth's second statute, 1 Eliz., c. 1, was a Third Act of Uniformity, which replaced the Prayer Book of 1552 by an amended form of the same, slightly altered in a better direction. The queen had wished for the restoration of ceremonies allowed under the First Prayer Book (1549), but the Commissioners were more inclined towards the Second Book, and it accordingly was taken as the basis of the new Act of Uniformity. It had been useless to approach the Convocation on the subject, for that body was decidedly in favour of Roman doctrines. The bishops voted unanimously in the House of Lords against the Act of Supremacy and the Act of Uniformity. It was found eventually that outside the compact body of the Marian bishops there was little if any protest in favour of the Pope, and only a relatively small number of the clergy refused to accept the two Acts.

The Injunctions.

Elizabeth issued Injunctions for the guidance of the clergy and laity, as Henry and Edward had in turn done. The Act of Supremacy did not include among the very wide powers given to the sovereign the power of making laws for the Church; but the Commissioners enforced these Injunctions as laws, and in some cases even went beyond them.

The Advertisements.

Archbishop Parker endeavoured to have a Book of Disciplinary Articles published by royal authority. The queen was averse from doctrinal statements and refused to issue the book. Parker then changed it into Advertisements, for the due administration of common prayer and the holy sacraments and for the apparel of the ministers. In regard to the apparel, the Advertisement either replaced the Ornaments Rubric or stated the minimum ritual that could be tolerated. Parker in vain endeavoured to have the queen's public authority for issuing the Advertisements. He had to publish them himself, by authority of the Commissioners, to his own province of Canterbury. It is not known that they were sent to York. The present state of the law as to the vestments, as declared by the latest judgment, depends on the meaning, and still more vitally on the authority, of the Advertisements.

The Thirty-nine Articles.

In January, 1563, Convocation considered the Forty-two Articles. The Bishops unanimously subscribed them after careful emendation, the Archbishop of York and the Bishops of Durham and Chester also subscribing. An alteration of arrangement had reduced them to thirty-nine. The Lower House were not unanimous and some of them did not subscribe. They were laid before the queen as "agreed upon by the archbishops and bishops of both provinces and the whole clergy in 'the Convocation holden at London in the year 1562 according to the computation of the Church of England'" (1563, new style). Her ratification was not accorded for nearly a year. When it was received, there was found to be prefixed to Article XX. the words *Habet ecclesia ritus statuendi jus et in fidei controversiis auctoritatem*, The Church hath power to decree Rites or Ceremonies, and authority in controversies of faith. Also, Article XXIX., of the wicked not eating the Body of Christ, was omitted. Curiously enough at the trial of Archbishop Laud it was charged against him that it was he who inserted the clause "The Church hath power &c." The Thirty-nine Articles were finally settled, with this clause, in 1571, two years before Laud was born. The queen had long refused her assent to requirement of subscription to the Articles by the clergy, but she finally gave consent and it was included in the Act 13 Eliz., c. 12, "An Act for the ministers of the church to be of sound religion." The penalty for a recusant was that "all his ecclesiasle promotions be void, as if he were then naturally dead."

The Prohibitions.

Towards the close of Elizabeth's reign, the ecclesiastical courts, sharing the disfavour of the Commission, were fiercely attacked. This had gone so far that in January, 1602, the archbishop (Whitgift) warned the bishops that the very existence of their courts was threatened, and unless they were diligently reformed they must fall. Attempts to deal with them in Parliament having failed, the secular judges developed the practice of intervention by Prohibition, the courts of common law issuing orders to stop the procedure of the courts ecclesiastical in certain of the cases brought into those courts and bring them into the secular courts. It was an old question. The Convocation held at Merton under Archbishop Boniface, in 1258, declared that lay persons who procured a royal Prohibition, to escape the ecclesiastical judges, were to be excommunicated.

When Bancroft was promoted to the primacy in 1604 he took up this matter with all his wonted energy. In the autumn of 1605 he brought before the Privy Council twenty-five articles of complaint of the clergy against the secular judges, the number of Prohibitions issued having been very large. The articles were submitted to the judges, and in half a year's time they sent a paper, unanimously agreed upon by them, containing an answer

to each of the twenty-five articles of complaint. There was a good deal of plain speaking in the answers. Many of the cases seem to have properly belonged to the secular courts, as, for example, tithe cases where the question was the right of possession of tithe not the manner of exercising the right. In such cases the Prohibition was a matter of course.

Three years later the archbishop made another attempt, and the question was debated in the presence of King James, who favoured Bancroft's argument that the judges were the king's delegates and the king could take any causes out of their hands. Coke flatly denied that and withstood the king. The ecclesiastical courts had no right to interpret statutes; they must take their law from the secular judges. Bancroft's effort did harm rather than good; it tended to make the Church and the king more unpopular.

The Canons of 1604.

During the vacancy in the primacy caused by the death of Whitgift, Bancroft, as Bishop of London, obtained the licence of King James for the synod to make canons. The resulting Canons of 1604 were properly passed and ratified by Convocation. They were "published for the due observance of them, by His Majesty's authority, under the Great Seal of England." They are binding on the clergy. There has been much controversy on the question whether canons lawfully made in Convocation and lawfully promulged are binding on the laity of the Church as well as on the clergy. The balance of practical opinion appears to be that save where they recite older canons which had parliamentary or customary sanction they do not bind the laity.

The "Authorised" Version.

The "authorised" version of the Bible, a noble piece of work, was issued by the revisers, whose work had been undertaken under instructions from the king. Curiously enough, the instructions were given (July 22, 1604) only a fortnight after the prorogation of the Convocation which had made the Canons of 1604. Canon 80 had for the first time authorised the Bishops' Bible, and the purist might say that it is now the only legal Bible. The so-called "authorised version" had not the authority of Convocation, King, or Parliament.

Charles I.

Upon the troubled times of Charles I. it is not necessary to enter in any detail. The opposition to the Church had become acutely political. The House of Commons appointed in 1628 a "Committee for Religion." The clergy had been instructed, in a paper drawn up by Laud as Bishop of London, to preach in favour of a loan to the king for the purposes of war, grants for that purpose having been refused by the Commons. Dr. Mainwaring, Rector of St. Giles', had preached before the king, maintaining that kings were above angels, their power not human but superhuman, a participation of God's own omnipotency. The

Commons indicted him. The Lords pronounced sentence upon him by vote; he was to be imprisoned during the will of the House; to pay a fine of £1,000; to make submission to both Houses; to be suspended from his ministry for three years; to be disabled from receiving future preferment or preaching at court. He made submission; had a short imprisonment; the fine was remitted; promotion was given him; and in 1636 he was made Bishop of St. David's.

The Court of High Commission had gone from bad to worse in the opinion of the people. Charles I. abolished it by Statute 16 Car. 1, c. 11. The reason assigned in this statute for its abolition is that the Commissioners have, "to the great and insufferable wrong and oppression of the king's subjects, used to fine and imprison them and to exercise other authority not belonging to ecclesiastical jurisdiction."

Charles II.

On May 1, 1660, Charles II. issued from Breda his declaration of "liberty to tender consciences," "that no man shall be disquieted or called in question for differences of opinion in matters of religion which do not disturb the peace of the kingdom."

The Act of Uniformity of 1662.

In 1661 the Convocation undertook the review of the Prayer Book. The Church of England had a very great chance. Peace was desired on all hands. The nation had had too much of political presbyterianism. The restoration of the Church in its integrity was desired equally with the restoration of the sovereignty. A large number of changes were made in the Book, certainly not in a Puritan direction. The Lords heard them all read, and passed the Bill of Uniformity with the altered Book annexed. The Commons decided not to debate the alterations, while resolving that they might have done so had they seen fit. The new Act of Uniformity and the Prayer Book as altered became law, 13 & 14 Charles 2, c. 4.

The Bill of Union.

William III. introduced in the Lords a Bill of Toleration and a Bill of Union. The latter Bill practically proposed "that," with a view to "uniting their majesties' Protestant subjects," the whole terms of uniformity, the whole status of the Church, should be altered to the satisfaction of dissenters, without any discussion by the clergy, any approval by Convocation. The Bill was passed by the Lords. The Commons refused to discuss the Bill. They addressed to the king a request that he would continue his care for the Church of England, and would issue writs, according to the ancient usage and practice of the kingdom in the time of Parliament, for calling a Convocation of the clergy to be advised with in ecclesiastical matters. The king thereupon took counsel, especially with Tillotson, Dean of St. Paul's, and it was agreed to summon a Convocation in the usual form when the next Parliament

was summoned, and to submit to it the details of a comprehension of nonconformists.

James II.

At the end of the year 1680, the Lords had thrown out a Bill for excluding the romanist Duke of York from succession to the throne. The leaders of the Church of England had been active against the Bill. When James succeeded in 1684, he set to work to undermine the Church, though in his first address to the Privy Council he had declared that he would make it his endeavour "to preserve the government, both in Church and State, as it is now by law established." He restored by his own sole authority the old Court of High Commission. Compton, the Bishop of London, was suspended by this illegal court, and three bishops were appointed to exercise his functions. After placing a large number of Romanists in positions of importance, he issued a declaration of liberty of conscience, removing by his dispensing power all the legal restrictions upon Romanists and other nonconformists. This declaration he ordered to be read in all the churches. The primate, Sancroft, and the Bishops of St. Asaph, Ely, Chichester, Bath and Wells, Peterborough, and Bristol, informed the king that they could not take part in its distribution and publication, because it was founded on such a dispensing power as had been often declared illegal in Parliament, particularly in 1662 and 1672 and "in the beginning of your Majesty's reign." For this they were tried for having written, "under pretence of a petition, a certain false, pernicious, and scandalous libel." Two of the judges pronounced it a libel, two declared it no libel the king having no such dispensing power as he claimed. The jury were locked up all night, and in the morning brought in a verdict of *not guilty*. The seven bishops were popular heroes. The disappearance of the king was only a question of time.

The dispensing power.

We now reach the third and present era.

Tension in Convocation.

From 1690 to February, 1701, Convocation had not been allowed to meet for deliberation. When it met in 1701 there was a strong feeling in the Lower House against the House of Bishops. The Lower House thought its rights invaded. When the time for prorogation came, the archbishop prorogued both Houses to the Jerusalem Chamber at Westminster, where the bishops sat. The Lower House refused to recognise this prorogation, and continued to sit for a time, when the prolocutor adjourned the House to the place of its own sitting, the Henry VII. Chapel. The archbishop rebuked the prolocutor, who replied that, in the opinion of his House, his action was in accordance with usage and right.

This dispute continued under Queen Anne, whose earnest friendliness and generosity towards the Church must never be forgotten. In her time the wrath of the Lower House against the House of Bishops waxed ever warmer. They refused to join with the

Bishops in an address to the Crown, claiming the right to send an address of their own. The primate informed them that they were not constitutionally a separate House; they were the Council of the Bishops, to give advice when advice was sought.

Convocation closed in 1717.

The closing of Convocation in A.D. 1717 is sometimes referred to as a gross interference in Church affairs on the part of the State. But it is important to bear in mind that it was not the action of Parliament. It was the act of the Crown, with whom rested the permission and the withdrawal of permission for the Convocation to sit and do business. It was, of course, a political act. The ministers advising the Crown were naturally in the Hanoverian interest, while some of the leaders of the Church were credited with Jacobite tendencies. But, again, it must be remembered that a rather unseemly quarrel was going on between the two Houses, centering about Dr. Sherlock in the Lower House and Bishop Hoadly in the Upper, two men who had been Fellows of the same small college in Cambridge (Catharine Hall) and had not been on good terms as undergraduates. All that, however, has nothing to do with the fact that the withholding of permission to do business in Convocation from 1717 to 1854 was in itself scandalous, and was harmful for the Church; while at the same time it must in frankness be admitted that during a large part of that time there was an apathy and lethargy in the Church—due no doubt in great measure to the silencing of the voice of the Church and to the political appointments to bishoprics—which deserved no better fate. With more life in the Church, the claim for a restoration of the Convocations would have made itself felt long before.

Hanoverian and Jacobite.

Reopened for business in 1854.

Modern conflicts of opinion.

The revival of business in Convocation was both symptomatic and creative of great change, it may be said, vital change, in the spiritual atmosphere of the Church and of churchmen. Conflict of opinion naturally became prominent and acute. On the one hand, new problems of dealing with new situations had to be faced. The best ways of dealing with the crowded poor in the east of London, of bringing the Church to them and them to the Church, had to be considered and put in practice. The same problems forced themselves into prominence in other parts of the kingdom, specially in the crowded parts of cities. The student of Church history was reminded of the coming of the Friars. The growth of non-conformity called for more definite attention to the fundamental principles of the Church, in theory and in practice. This led to searching enquiries into doctrine, liturgiology, and ritual. The deep interest and value of continuity began to be realised. On the other hand, ease of travel, wider reading, and expansion of interests, had forced the claims of art, music, and architecture, upon spiritual thought and upon the external pre-

sentiment of sacred things. When issues so deep are in question, a Church would indeed be dead if conflict of opinion was not acute. There was bound to be excess in the action due to awakened zeal on one side, excess of immobility due to mislike of change on the other.

Noted by the Crown and by Parliament.

Parliament, and later the Crown, has taken note of the various outcomes of quickened life in the National Church. This is evidenced by the Act of Uniformity Amendment Act 1872 (35 & 36 Victoria, c. 35); the Public Worship Regulation Act (37 & 38 Victoria, c. 85); the Royal Commission on Ecclesiastical Discipline, 1906; and the Royal Letters of Business (based upon the recommendations of that Report) granted by King Edward VII. and King George V. to the Convocations "to debate consider consult and agree upon . . . . the desirability and the form and contents of a new rubric regulating the ornaments (that is to say the vesture) of the ministers of the Church at the times of their ministrations, and also of any modifications of the existing law relating to the conduct of Divine Service and to the ornaments and fittings of churches."

Their effect upon statesmen.

The effect upon the State of this acute conflict of opinion among members of the Church must be more or less embarrassing, and to the same extent detrimental to the smoothness of the relations of the State with the Church. Statesmen must have been puzzled when they saw the remedies proposed for scandals connected with the traffic in presentations and advowsons contested and whittled down by churchmen in the House of Commons. And only the other day the present Prime Minister had to tell the National Church that the hindrance to passing the Bishoprics Bill came not from him but from a group of churchmen in the House. Churchmen have to blame themselves as well as the State for the great difficulties there are in obtaining useful legislation in Church affairs. What is imperatively needed is that the Church should have some definite means of speaking as a whole. Speaking as a whole means of course speaking in the name of a majority, ascertained by proper representative process. If and when the Church has that means, there will of course be cavillers among churchmen, but the State will know with whom and with what it is really dealing.

Decline of power in legislation.

The loss of power by the Church in regard to legislation has been due to the natural drift of things rather than to intention on the part of the State. This may be illustrated by a consideration of the relative proportion of spiritual and lay persons in the Great Council and its hereditary successor the House of Lords, at various stages in their development. Looking first to the historic Assembly in 1265, from which the House of Commons dates its full being, the

occasion on which knights of shires, citizens, and burgesses were summoned, Henry III. summoned 5 earls and 18 barons, and 1 archbishop (of York, not Boniface of Canterbury), 13 bishops, 65 abbats, and 35 priors; that is, 114 spiritual and 23 temporal peers. For the Parliament in 1295 Edward I. summoned 9 earls, 41 barons, and 2 archbishops, 18 bishops, 67 abbats, and 3 priors; that is, 90 spiritual and 50 temporal peers. In 1485 29 lay and 49 spiritual peers were summoned. In Henry VIII.'s time there were summoned to the "Reformation Parliament" 44 temporal peers, 18 bishops and 2 guardians of spiritualities, and 28 abbats and priors, that is, 44 temporal and 48 spiritual; after the disappearance of the abbats and priors, there were twice as many lay as spiritual peers. At the accession of George I. there were 178 English lay peers and 26 spiritual peers. In 1914 the lay peers were more than twenty times as many as the spiritual, the spiritual having been five times as many as the lay 650 years before. In these days the spiritual peers, few as they are, are much too closely engaged in their dioceses to attend the sittings of the house on ordinary occasions.

Recent action of the State.

We must glance, in conclusion, at the more recent action of the State in connection with the Church. It may be described as due to indifference or disregard rather than to hostility.

Excommunication.

The Act 53 Geo. 3, c. 127, forbids the ecclesiastical courts to issue excommunications, except as spiritual censures for offences of ecclesiastical cognizance. It provides civil procedure in other cases where the ecclesiastical courts had been accustomed to resort to excommunication. That was a careful distinction between the proper powers of the Church and the proper powers of the State. Persons offending against the law of the Church can still by law of the land as well as by law of the Church be put out of communion with the Church, independently of the rubrics dealing with exclusion from communion, which also are the law of the land as well as the law of the Church.

Marriage before the Registrar.

The Marriage Act of 1836 (6 & 7 William 4, c. 85) enacted that the superintendent registrar may issue certificates for marriage in any building certified as a place for religious worship and registered for solemnizing marriages therein, and that persons who objected to be married in a registered building might contract and solemnize marriage at the office and in the presence of the superintendent registrar and some registrar of the district and in the presence of two witnesses, with open doors, and within the lawful hours. This was practically a return to the custom of Anglo-Saxon times, which made the civil contract of marriage a full marriage; the requirement of a blessing by a priest having been formulated, as we have seen, by Lanfranc. Resort to the civil

contract of marriage is the natural course for persons who by Church law ought not to be married in church.

Validity of the simple contract of marriage.

It should be stated here that the validity of the simple contract of marriage, without the blessing of the priest, was affirmed in the discussions at the Council of Trent and was allowed by its decree. There was a debate on the question whether the presence of a notary or of the parish priest as a witness of the making of the contract should be required. It was decided that the parish priest was the more accessible. The French prelates desired it to be stated that he presided—*praefuerit*—at the marriage; "but this was rejected, on the ground that all that was sought for by his presence, however obtained, was to secure a valid and unimpeachable testimony to, and proof of, the marriage." To make the blessing of the Church or other detail essential to the validity of marriage, was, it was argued, to make certain things essential to a Sacrament which had not previously been considered necessary. That "was to change the essence of a Sacrament, a power which the Church did not pretend to possess." "In the opinion of the great majority the contract alone was essential to the validity of marriage, the parties to which were also, in the opinion of the same majority, the actual ministers of the Sacrament." The final decree accordingly gave advice in the matter, did not enjoin. "The holy Synod exhorts the bridegroom and the bride * not to live together in the same house until they have received the sacerdotal benediction, which is to be given in the Church."

Imprisonment of clergy.

The Act 3 and 4 Victoria, c. 86, repealed an Act 1 Henry 7, c. 4, whereby bishops and other ordinaries could correct criminous clerks by commitment to ward or prison without liability to an action for wrongful imprisonment. It confined the ecclesiastical courts to a process with suspension or deprivation of benefice as the penalty. The process was unduly slow, but the change of penalty was a great improvement.

Cases removed from the ecclesiastical courts.

The years 1855-7 saw the ecclesiastical courts deprived of jurisdiction in cases which affect clergy and laity alike. This again was a sound principle.

The short Act 18 & 19 Victoria, c. 41, took away from ecclesiastical courts the jurisdiction in suits for defamation.

The Act 20 & 21 Victoria, c. 77, took away the jurisdiction in testamentary causes and vested it in a Court of Probate.

* "*Conjuges*, the married couple." It should be stated that the phrases used in this paragraph, and the passages quoted, are copied from Waterworth's introduction to his translation of the Canons and Decrees of the Council of Trent. The book is dedicated (1848 Dolman New Bond Street) by permission to the Right Reverend N. Wiseman D.D., Bishop of Melipotamus.

The Divorce Act.

Two days later, the Divorce Act of 1857 (20 & 21 Victoria, c. 85) made a vital change in the law relating to marriage. Up to that time the ecclesiastical courts had annulled marriages which were in themselves invalid, and had pronounced decrees of separation *a mensa et thoro*, taking a money bond that neither of the persons so separated should marry again in the life time of the other; a person marrying again forfeiting the bond but not being liable to trial for bigamy. The Divorce Act took from the ecclesiastical courts all jurisdiction in all causes suits and matters matrimonial, except so far as relates to the granting of marriage licences. Except in proceedings to dissolve any marriage, the civil court is to proceed as far as may be conformably to the principles and rules which have guided the proceedings of the ecclesiastical courts. There was no harm in that. In a full divorce, with power to marry again, an Act of Parliament had been required, proceeding upon a decree of an ecclesiastical court pronouncing separation *a mensa et thoro*. Divorce, therefore, was not a new thing in our history. The Divorce Act gave to a Court of Divorce and Matrimonial Causes the power to pronounce a decree of full divorce. This was opposed to the deep feeling of a large majority of the clergy of the National Church; and a clause directly affecting the clergy gave very deep offence, which is felt as strongly now as ever. The State might well have said that as the right to marry again was given by the State, the party must resort to the State, through the registrar, to perform the new marriage ceremony. But, while no clergyman can be compelled to solemnize the marriage of a "guilty party in his church," a clergyman refusing so to do must allow any other clergyman entitled to officiate in the diocese to solemnize the marriage in the said church, if but for this refusal the parties were entitled to be married there. In the recent Act allowing marriage with a deceased wife's sister the State took the other course, and did not give the right to marriage in church. That was higher statesmanship. In both of these cases the very gravest question of Church law is raised when those who are thus married propose to present themselves at Holy Communion. This is probably the most dangerous feature in the present relations of Church and State.

Deceased Wife's Sister Act.

Divorce in the Council of Trent.

Here again we find the Council of Trent in serious difficulties. It is well that English churchmen should know that their difficulties are neither new nor due to their separation from Rome. The following passage is quoted from page ccxxviii. of Waterworth's book already referred to:—

> "A canon had also been proposed anathematizing those who assert that the bond of marriage is dissolved by adultery. But the Venetian Ambassadors, on the 11th of August [1563] represented, that, unless the draught were altered, great

scandal and evil would be produced in some of the dependencies of their republic; as in Candia, Cipras, Corfu, Zante, and Cephalonia; in which islands, and in other places, it had been the custom, from time immemorial, not only to allow divorce, in cases of adultery, but also to permit the parties to marry again. They proposed, therefore, that the canon should be changed into the form in which it is now found; anathemazing, that is, those who assert that the Church has erred in declaring that marriage is not dissolved by adultery, but abstaining from the actual condemnation of those who assert that the bond is broken by that crime. This request, though yielded to, met with considerable opposition."

Brawling.

The Act 23 & 24 Victoria, c. 32, removes from the ecclesiastical courts the power to entertain or adjudicate upon any suit or cause of brawling against any person not in holy orders. The churchwarden can apprehend any such person making disturbance in church or churchyard and take him before a justice of the peace.

Public Worship Regulation Act.

Under the Public Worship Regulation Act (37 & 38 Victoria, c. 85), if a clergyman disobeys a monition to cease from unlawful proceedings or from neglect in connection with the fabric ornaments or furniture of the church, or the services rites or ceremonies, the judge of the ecclesiastical court may "signify the contempt" to the Chancery Division of the High Court of Justice, and the disobedient person will be imprisoned. This process created martyrs and was opposed to the best feeling of the age.

Clergy Discipline and Benefices Acts.

The Clergy Discipline Act (55 & 56 Victoria, c. 32) has been very useful in the treatment of criminous clerks; and the Benefices Act (61 & 62 Victoria, c. 48) has enabled the ecclesiastical authorities to stop many of the objectionable practices which had been possible in connection with presentations to benefices. The Benefices Act would have been stronger and more effective than it is, but for the opposition of some church laymen in the House of Commons.

The Welsh Church Act.

The Welsh Church Act (4 & 5 Geo. 5, c. 91) is probably the greatest interference on the part of the State in the affairs of the Church which our history has seen in other than times of open revolution. Section 3 (5) enacts that "as from the date of disestablishment the bishops and clergy of the Church in Wales [a descriptive title which possibly goes further than its authors intended] shall cease to be members of or be represented in the Houses of Convocation of the Province of Canterbury." This appears to be an invasion not of the Church rights of the Province of Canterbury only, but of the functions of the Crown. The head-

ing of Section 13 in the "Arrangement of Sections," and its marginal heading, "Power to hold synods . . . . ", appears on the face of it to be another invasion of the functions of the Crown. But the section itself does not profess to give the power, it merely declares that the Act does not take the power away.

Other Acts.

A large number of Acts relating to the business of the Church have been passed in recent times, in addition to the Acts here described. It will be sufficient to name the subjects dealt with:—Church Building, New Parishes, Pluralities, Dilapidations, Resignation, the Ecclesiastical Commission for England, New Bishoprics, Vestries.

Conclusion.

The illustrations given in this summary, from various periods of our history, may suffice to shew how largely the causes of tension between Church and State have in the course of time been removed, and how much more clearly the mutual functions of the two are now defined and understood.

APPENDIX VIII.

MEMORANDUM BY THE BISHOP OF OXFORD ON THE FUNDAMENTAL IDEA OF THE SPIRITUAL INDEPENDENCE OF THE CHURCH.

"There is in principle no inconsistency between a national recognition of religion and the spiritual independence of the Church." With this affirmation the Resolution of the Representative Church Council begins which constitutes our terms of reference. The main part of our work will doubtless lie in the consideration of those features in the present relation of Church and State in England which hinder spiritual independence, the formulation of the needed reforms, and the discussion of the best means of effecting them. But it seems to be desirable that there should be before us, for discussion if necessary, some statement of the original principle of spiritual independence and spiritual authority in the Church as it is to be found in the New Testament and in the literature of the Early Church, and as it emerged into distinction in the early relationships of the Church to the empire. The fundamental principle of the Church can be best seen in its earliest records.

It does not seem to be open to question that Christianity, *i.e.*, membership in Christ, was from the first, and never more decidedly than at first, assumed to mean membership in a visible society called the Church which was recognised as having a controlling authority over its members, an authority which was reckoned as Divine, and what we may call the individualistic idea—that a man becomes a Christian by individual faith, and only by a subsequent act joins himself to a, or to the, Christian society—is to-day almost universally recognised as not the original Christian principle. To become a Christian by baptism, to be baptized into Christ, was to become *ipso facto* a member of the Christian society ("by one spirit were we all baptized into one body"), and amenable to the authority of the body.

The temper of the early Christian society or societies (for each local church was held to represent the whole body) was a very liberal temper. St. Paul, for instance, is at bottom a strong disciplinarian, but also he loves individual liberty. Yet, at the last resort, he claims that the authority of the body is over the individual. He *must* submit himself or be cut off. This principle

of necessary membership the Church derived from the earlier Jewish Church. But our Lord was believed to have confirmed it with Divine sanction for the new Israel, the Christian Church. The Church was to have authority to bind or to loose, *i.e.*, to legislate by way of permission or prohibition with Divine sanction, "Whatsoever ye shall bind on earth shall be bound in heaven, and whatsoever ye shall loose on earth shall be loosed in heaven," and it was to have what is necessary to render legislative authority effective, a corresponding disciplinary power over individuals, "Whose sins ye forgive, they are forgiven unto them, and whose sins ye retain, they are retained." That is to say, the Church was to exercise discrimination over the admission of new members, and to have the authority to exclude those already admitted, and to readmit them to its communion. So these sayings of Christ were understood and applied from the beginning and without any question.

It is true that as soon as ever these general principles are laid down important questions arise in one's mind as to the exercise of the legislative and judicial authority in the Church, and, in fact, such questions have arisen more or less acutely in the history of the Church; and it may be profitable to notice some of the most important of them, if only to set them aside for the present.

1. There is the question of the relation of the different elements in the Church, the clergy and laity, and, within the clergy, of the bishops and the presbyters, to one another in the exercise of legislative and judicial functions. We may have to consider this important set of questions when we come to deal with the reconstitution of the legislative and judicial system of our own Church, but for the present we are not concerned with them. We are concerned only with the spiritual independence and authority of the Church as a whole.

2. There is the question of the relation of each local church or group of churches to the whole Church. To a certain extent each local church may be considered as free to administer its own discipline; but obviously it would be dealing with principles which concerned the whole Church, and it must be subject to the authority of the whole Church. This authority of the whole over its parts is represented in apostolic days by the authority of the apostle or apostolic representative controlling the action of particular churches. And in later days it finds expression in a regular system of subordination of each local episcopate to a province represented by a provincial synod, and of each province to the whole Church represented by an ecumenical council. And then again, this theory of graduated authority is crossed by another theory, expressed in the papacy, of a central authority, passing into a monarchy, of one bishop over the whole Church. It is certain that the Church of England—though it has rejected the papal autocracy—does not regard itself as the whole Church

or claim power to ignore the Church as a whole, within or without its communion. But again, with this question we are not here concerned.

3. Lastly, there is the question of the limitation of the authority which belongs even to the whole Church. It can make rules freely in application of its own principles, for the government of its own members, and it can do so with the highest authority. "It seems good to the Holy Ghost and to us to lay upon you these injunctions"—that is the tone which it uses. But it is not unrestricted in its authority. It is governed absolutely by the "Word of God" on which it is founded. Thus in particular in regard to doctrine, it has no authority to add to or repeal the original message, but only to hand it on and to maintain it. This was very plainly expressed by Athanasius when he called attention to the fact that the first ecumenical council at Nicaea had used different terms when giving practical directions and when speaking of doctrinal matter. "With reference to Easter," he says, "such and such things were determined (ἔδοξε), for at that time it was determined that all should obey a certain rule; but with reference to the faith they wrote not 'such and such things were determined' but 'thus the Catholic Church believes.' And they added immediately the statement of their faith, to show that their own sentiments were not new but apostolic, and that what they wrote was not any discovery of theirs, but was what the Apostles taught."* Thus the spiritual authority claimed for the Church was a very restricted authority in matters of doctrine and indeed in any matter of principle which was believed to be an element of the original revelation.

But none of these questions concern us at present. There lies behind all of them the idea of the Church as a self-governing society, having authority over its members with Divine sanction, having a Divine claim to govern itself. Such it conceived itself to be, and by this very fact it was liable from the first to come into conflict with the great State in which it found itself, the Roman Empire.

The early Christian Church, unlike the people of the Jews in which it had its origin, showed no disposition to rebellion. Its kingdom was not of this world. It did not claim to be a state. On the contrary, through the lips of St. Peter and St. Paul, it recognised the Divine commission of the secular authority, the Roman Empire. That, it held, was of Divine institution, and its officers had authority by Divine appointment for the maintenance of civil justice and order. Thus there was in the early Christian Church the clearest recognition that human life is under two authorities, both Divine and wholly distinct in sphere—the State and the Church. In their mind there was no risk of confusion.

* Athan. de synodis, 5.

They asked only for such spiritual independence as was wholly compatible with the full recognition of secular authority. But the empire was not easily convinced of this. It was constitutionally jealous of the existence of any corporation exercising independent authority over its members within its borders. And the Christian Church was especially offensive in virtue of its religious principles and scruples. Thus from time to time the alarm was raised, and it persecuted the members and officers of the Church simply for being Christians. Thus, what was in St. Paul and St. Peter's view a Divine institution only menacing to the evil, becomes to the seer of the *Apocalypse* the great wild beast of violence which God will speedily destroy. But so far as the empire tolerated the existence of the Church there was of course no tendency to confuse the spheres of authority. They may be said to come into contact only on one occasion, before the period of "establishment," and that as might be supposed on the question of property. A rebellious bishop, Paul of Samosata, condemned and excommunicated by the Church (269), retained hold of the episcopal buildings; and the Emperor Aurelian was appealed to, and determined that he would recognise as the rightful owner of the property the Bishop of the Christian Body accepted as such by the bishops of Rome and Italy. The emperor did not even dream of going into the theological questions at issue. But circumstances were soon to change.

After the last persecution the Edict of Milan finally decreed the free toleration of the Church in the empire, and Constantine's first expressed intention was that the empire should freely tolerate diverse religions, interfering with none. "That we should give to the Christians and to all a free power of following whatever religion any one has chosen, so that the Divinity in this heavenly seat may exist appeased and propitious to us and to all our subjects." But the tradition of a state religion with the emperor for its head was too strong for any such intention. In a very little while Paganism was proscribed, and the Church became the State religion, with the emperor as the "divine head" of the State. He was, according to Constantine's idea, to leave the internal affairs of the Church to the bishops, while he exercised an "external episcopate." In the East this was found to involve a very direct interference by the emperor in theological matters, and in such matters as the discipline of Christian marriage.

It is astonishing with what little resistance the Christian Church in the East consented to accept a marriage law notoriously below the Christian standard. But in the West, where the emperor, in Dante's famous phrase, had vacated Rome "to make room for the Pastor," the Church with the Pope at its head had, on the whole, its own way in spiritual matters; but in both East and West the old Christian idea that "it does not belong to religion to compel religion, which should be accepted voluntarily,

not by force" (Tertullian), and that "nothing is so much a matter of free choice as religion, compulsory religion is no religion at all" (Lactantius), entirely vanished. To belong to the Christian Empire, to share its privileges and offices, or later to belong to any of the kingdoms which arose out of the empire, a man must conform to its religion. In other words, the secular arm enforces religious conformity. This principle holds almost complete sway through the Middle Ages and the Reformation period down to the seventeenth century, with of course various adjustments between the spiritual and temporal authorities. We are all familiar with the particular adjustment of those authorities which came to prevail in England as a consequence of the Reformation and the breach with Rome. We are familiar also with the fact that now for a long time the old conception of establishment, under which full citizenship was confined to members of the Church, and the whole country with its Parliament was to be regarded as constituting the laity of the Church, has completely broken down. It is now universally recognised that all kinds of religious persuasions are to be treated with perfect impartiality in the eye of the State. It is only in a very restricted sense that the Established Church can be truly spoken of as still the organ of the State for religious and moral purposes. In almost all directions in which it wants to use moral and spiritual forces, the State is obliged to look impartially to all the religious denominations. Meanwhile the old idea of establishment survives in full force as a hampering restriction on the Church, which finds itself precluded from its most necessary reforms and denied its most necessary liberties because nothing can be altered without an appeal to Parliament. This is the situation which we seek to remedy. The Church in fact has resumed a position not unlike that which it held in the early centuries, or that portion of the early centuries when the dread of persecution seemed to be far removed. It has no desire to coerce any one. It stands only as one of various religions making a moral claim upon the voluntary allegiance of men. Under the circumstances the Church does not ask, or desire, to abandon what remains of the established position and obligation, but it must ask liberty to resume its original and indefeasable right of self-government, without which it cannot really exercise its trust according to the intention of its Divine founder; and it believes that this independence is quite compatible with the national recognition of the Church as still the Church of England. Moreover, the present writer believes, with the author of *Churches in the Modern State*,* that it is a matter of the greatest importance that the modern legal and general theory of State unity and authority derived from Roman times should be so fundamentally remodelled as to recognise fully and frankly, not only with

* Dr. Figgis.

regard to the Established Church, but with regard to all other Churches and corporate bodies, that the great unity of the State and its authority can include and recognise a great variety of relatively free corporations exercising in their own spheres authority over their members, while they yield all of them recognition and obedience to the State which comprises and, in its own general sphere, rules them all.

If the Church in England to-day is to claim a liberty of spiritual action similar to that exercised by the early Church or such as is suggested in the New Testament, it would include at least the following points:—

(1) Liberty of administration such as would admit of the establishment of fresh bishoprics, and, if necessary, fresh provinces, and the reform of the system for representation of clergy and laity in Church Councils or assemblies.

(2) Either the election of bishops by the laity and clergy of the Church, or at least some franker and fuller recognition of the right of the Church to refuse a bishop nominated by the Crown.

(3) Liberty to revise doctrinal standards, standards of discipline, and rites, and ceremonies.

(4) Liberty to exercise discipline over its members, determining, *e.g.*, questions of orthodoxy in courts of its own, and determining also who is to be admitted to the sacraments.

In all these matters the Church should have full liberty of action, with the understanding that when it had exercised its legislative or judicial power, there must remain with the State a power of revising by its own legislature or in its own courts the decision of the Church; and that if the State reversed the decision of the Church, it would remain for the Church either to submit or to reaffirm its decision, and in the latter case to take the consequences either in loss of property, or, at the last resort, in the loss of the whole "established" position of the Church.

The question of how much it is expedient for the Church to claim at the present moment has not been considered.

APPENDIX IX.

MEMORANDUM ON THE CHURCH IN ITS RELATION TO LAY FEELING AS EVINCED AMONGST THE WORKING CLASSES, STUDENTS, &c.

Prefatory Note.

[This Memorandum was first drawn up by Mr. A. L. Smith and Mr. H. E. Kemp; and Mr. A. Mansbridge expressed his general agreement with it. It was then shown to the Bishop of Oxford, Mr. Douglas Eyre, Dr. Frere, and the Secretary. As now presented, it has been modified in accordance with various suggestions by them.]

I.—CHURCH AND STATE.

No doubt the easiest interpretation to give to the phrase "the relations between Church and State" is to take each of these bodies in its most organised form; that is, to consider the Church in each of the organs through which it expresses itself by legislative or judicial or administrative action, that is, by its Convocation, or its courts, or its officials. In this sense, to the ordinary layman, the Church seems almost to consist of the clergy themselves and a few clerically minded laymen; and it is hardly realised by these two classes how deeply this is felt by the mass of the laity, to whom "the Church" means in the first instance a profession like law or medicine. By a similar interpretation, the State is thought of as "the Government" in its legislative and judicial and administrative action, that is, Parliament, the Law Courts, and the officials. It is quite possible, however, to take the wider sense, in which the Church means the whole body of its members; indeed, especially in Nonconformist circles, it is often now applied with a still wider extension to the whole

national life considered on its religious side; and it seems that "the Church" has more chance to-day of coming to be regarded as representative of the great majority of the nation than it has had since the rise of the Wesleyan movement in the eighteenth century, or perhaps since the rise of the Puritan movement in the seventeenth century. In a parallel way "the State" is coming more and more to be realised in thought and even in common speech as not merely the Governmental power, and that chiefly in its coercive aspect, but as the whole social community, the members of which, unless and until they renounce such a position, are legally regarded as contained within "the Church" in its wide sense.

Certainly a "consideration of the relations between Church and State" would to the ordinary layman mean, among other things, this especially, viz., a consideration of the place which religion actually holds in practical life at this moment; and, further, a consideration of the means by which it might be made to take a larger place, that is, to cover a wider area of social activities, to enter into them more boldly and more habitually, and to penetrate them more deeply; in other words, how can religion from a force acting on individuals as it were privately become more of a force acting on them in their social relations also?

The problem may perhaps be put more simply in a concrete form. If we accept candidly the fact that a very large part of the life of a modern community is not definitely Christian at all, but at most tinged with unavowed Christian ideas, then we may ask whether anything can be done by us to prepare the way for Christianity to recapture the world of labour, the student world, and even the world of business. Fifty years ago, and as late as thirty years ago, it seemed to have lost all real vital hold on these three spheres of action. But of late years the fact has become increasingly evident that they need not be taken for lost; that, if aloof, they are not necessarily hostile; and that sometimes they prove to be not even aloof but singularly accessible to religious appeals. Even what appears to be hostility, is often rather the soreness of disappointed expectations; and the phrase one often hears from working men or from students, "This is not what I understand by Christianity," is the greatest tribute to it as an ideal. Further evidence of this view will be found in the later portions of this Memorandum which together form an interesting survey of the motives of existing religious discontent, and prove (when certain superficial objections are set aside) that these motives are the expression of a deep religious idealism. This shows itself not only in the present state of feeling in the more thoughtful part of the labour world, and in the development of such a body as the Christian Students' Union, but also occasionally in the world of business and commerce in such action as that

recently taken by the Ford Motor Company. The time therefore seems opportune to ask whether this attitude of expectancy and hopefulness can fairly be expected to endure if definite steps are not taken to meet it and give it satisfaction; and such a meeting as this Archbishops' Committee seems also an opportunity which should be used to take into consideration this broad aspect of the whole relation between Church and State. It would be a pity at any rate to let this aspect of the subject remain unmentioned—to allow it to be passed over *sub silentio* and as it were to go by default. The ordinary layman will certainly not interpret "amendment of the relations between Church and State" as referring solely to amendments in existing machinery such as the constitution of Convocation, the mode of Parliamentary procedure, or the means for the removal of unfit incumbents. No practical man would undervalue these and similar amendments. The fear has been expressed that these amendments in machinery will only bring divergent parties more clearly face to face and lead to greater acrimony of controversy; but surely it would be generally allowed that in the religious sphere of all others abuses and imperfections are least tolerable, and that there is much virtue in the open-air treatment of great questions and in the frank handling of difficulties now widely felt. There seems, indeed, a general readiness in the Committee to accept the principle of greater co-operation on the part of the laity; and laymen may properly feel that it is their duty as well as their right to offer this. And, to be real, it must be in some form of regular organisation, and proceed from definitely constituted bodies; mere occasional consultation of "selected" laymen will not suffice. The amount of latent power capable of being called into action from bodies of men permanently united for an ideal object is one of the most striking features of modern life. The Church itself is stirring in this direction, as the convening of this Committee itself indicates. But the Church's claim for greater corporate independence has no chance of being listened to unless it is based on the reasonable ground that the Church is a real corporate body, that is, is really representative; and real representation must include representation of the mass of members, and the mass are laymen. If, therefore, by way of practical conclusions from these considerations, the demand is made for definite proposals, the following are put forward as tentative suggestions:—

(1) A far wider and more adequate representation of the laity in the government of the Church.

(2) The insistence on lay responsibilities for Church finances.

(3) The revival and development of the lay co-operation and control in parochial affairs.

A State Church should also be actively at work in the following or similar directions:—

(A) Joint action with labour representatives, somewhat on the analogy of the joint committees of universities and labour men for education by means of tutorial classes in industrial centres.

(B) Courses of direct addresses to students on practical religion (like those delivered this year by the Bishop of Oxford to Oxford undergraduates).

(C) Demonstration to students of the practical steps which can be taken by them to carry out their religious principles in their after life when they themselves become employers, professional men, or public servants.

(D) Personal appeals to individual employers on avowedly religious grounds, *e.g.*, to protect their employees against tyranny of subordinates and to mitigate the abuse of overtime work.

(E) A methodical survey of the many agencies which are now working in this general direction, but with little mutual acquaintance and with a lack of co-ordination, and which are not sufficiently widely known.

These suggestions are only put forward in mere outline to serve to illustrate the many possibilities of some practical outcome from the general considerations set forth in this Memorandum.

II.—THE POINTS OF VIEW OF "WORKMEN" TOWARDS THE CHURCH.

The well-instructed Churchman recognises "grades" of churchmanship; all baptized persons are members of the Church, but are often not effective members. He therefore accepts the creeds, sacraments, and ministry, and regards the Church as a body of greater extent than any single state, and superior because of its higher moral and spiritual authority.

The following views are held by the hostile workers, and largely held by those who are indifferent to the Church; the views expressed in Sections (1), (2), (3)(A), (4), (5), and (6) are largely held by men and women who are attracted to the moral ideal and the stability implied by a union of the Church and State, and who cannot be counted as hostile to religion; and are also held in more or less degree by many people who feel the need of the

spiritual ministrations of the Church, and who are often amongst the best of Church people.

(1) The Church is the Church of a class which is antagonistic to the democracy, *i.e.*, it is the moral policeman used in the temporal interests of the propertied classes.

(2) The clergy are State servants.

(3)—(A) The Church is out of date, its organisation obsolete and ineffective; and

(B) Its fundamental doctrines have been exploded by the truths of science. (The Rationalist Press Association is responsible for much of this view.)

(4) The "Communion" is an æsthetic indulgence for a few devotees, but has not any practical significance.

(5) The moral teaching of the Church is against progress.

(6) The endowments of the Church would be more usefully employed in providing infirmaries, houses for the poor, improved sanitation, &c., &c., &c., than in paying teachers of outworn "dogma." (This point of view is held by many Church people who will not admit that the dogmas are outworn, but feel that the legitimate aspirations of the people are ignored by the majority of the clergy and wealthy Churchmen.)

The above views are fostered by—

(1) The materialistic education of the people since 1870. The board schools are good, but the outlook of the 70's and 80's was grossly materialistic, and the present men and women were educated then.

(2) The Rationalist Press Association and literature similar to the Rationalist Press Association publications.

(3) The fixing of the attention on material prosperity in every section of life.

(4) The terrible hypocrisy of professors of Christianity, and the divorce of responsibility from property (as an instance, limited liability companies).

(5) The "class" clergy.

Opposed to the position sketched above there is a real and growing sense of the futility of material wealth and prosperity in the vital issues of life, and the sentiment of the majority of the average workers is curiously favourable to the necessity for some authoritative rule of life. The English language and life is psychologically inseparable from the teaching of religion—that

is, there is in the make up of most of our people a desire for some form of belief, and, for preference, the Church. Nonconformity is, in my opinion, a failing force from the point of view of religion; its tendencies are either towards an easy philosophy or towards politics of the individualistic character. On the whole the hedonistic tendencies of the day have caused a reaction which is favourable to the Church as a teacher, but if the mass of the people is ignored in any adjustment or readjustment, the religious thought of the workers may very easily be against any form of dogmatic theology and veer towards theosophy, spiritualism, or some other form of occultism. The belief in fortune-telling and witchcraft is widespread. My experience certainly gives me the impression that materialism as a religion is not satisfactory to the ordinary man.

Generally the Church is regarded as that body of Christians which is bound by the Book of Common Prayer, and is under the authority of the Bishops. There is a widespread sentimental desire, especially outside the Communion of the Church of England, to place all religious bodies on the same level as far as political recognition and privileges are concerned. The problem which calls for an early solution may be expressed thus: "If the Nonconformists represent a large proportion of the Christian sentiment of the country, how far can the Church of England continue to make a valid claim to be regarded as the sole official representative of the country in its religious aspect?" Or in other words, "Does the national recognition of religion necessarily involve the recognition of the Anglican body alone?"

The practical conclusion seems to be that what is needed to regain the confidence of the "working classes" is a thorough reconstitution of the representative system of the Church.

H. E. Kemp.

III.—METHODS BY WHICH THE WORKING CLASSES MAY BE REPRESENTED IN THE COUNCILS OF THE CHURCH.

Before considering methods we must start from a position, and that is in this case, that not only is it advisable, but it is a matter of vital importance that actual members of the working classes should be able to advise in the policy and management of the Church of England. Without labouring the point I think the following are the five main reasons for this position:—

(1) The Archbishops' Finance Scheme advocated consistent

and financial support of the Church by all Church people, and it is only fair that those who pay should have a voice in the business management;

(2) It is for the well-being of the whole community that a conscious effort should be made whereby the tendency towards the separation of classes may be counteracted;

(3) Only the possession of great ideals, and also the possession of a sense of responsibility can transform a mob into a democracy. This can be permanent only so far as those ideals and that sense of responsibility have an altruistic and spiritual basis. The Church has supplied that basis before, and must supply it now in this time of change;

(4) The various classes of the country are ignorant of each other's needs and aspirations, and points of contact are essential for progress;

(5) It is enervating and morally unhealthy for any people or class of people to have everything done for them.

Who are the "Working Classes"?

To answer this question one must recognise the fact that whilst the nature of a man's occupation has a little to do with determining whether he belongs to the "working" or to the "administrative" classes,* modern life is so complex that many of the lower-paid people are engaged upon what may fairly be considered administrative work. For instance, it is easy to perceive that a navvy, a bootmaker, or a carpenter is a worker in the ordinary sense, but it is not so easy to classify a railway booking clerk, a shop attendant, or an overlooker in a factory. These may each be engaged on real, if minor, administrative work, and it is possible that the pay may be drawn monthly, but probably the amount of pay in each case is less than that of a carpenter or smith.

Mode of Living depends on Wages.

But it is the amount of wages that determines the environment and conditions of life. In other words those families whose incomes are of about the same monetary value live similar lives, have equal opportunities, and enjoy similar comforts. This statement is subject to the obvious exceptions involved in the action of intemperance, laziness, thrift, and other personal habits, but the average people in the same locality, drawing similar wages, live surprisingly uniform lives.

* Terms "administrative" and "working" used in preference to "capitalist" and "labour."

Class, not Occupation, Important.

They are of the same class; that is, a man who receives £120 a year as a sanitary inspector may have as a brother an overlooker drawing £100 a year, and a sister working as a burler or weaver drawing 16*s.* a week. Anyone who has worked in a town is aware of the fact that comparatively well-off workers and poor ones are often blood relations, and the poorer ones are not necessarily inferior in character to their more successful relations. The working classes may fairly be considered to include the great majority of those who have been through the elementary schools who, whilst they have opportunities of rising in their own class, have comparatively little chance of attaining an income on which income tax should be paid. Even the better-paid workers have difficulty in making ends meet, especially if the father of a family be of an independent temper and determined to give his children a better chance in life than he had as a boy.

Working Classes are those whose Income is exempt from Income Tax.

In view of these facts the working classes may be regarded as consisting of those persons, whatever their occupations, whose family income is less than the minimum income tax standard. The following figures, from the *Statesman's Year Book*, 1914, are interesting as indicating broadly the proportion of children from whom the workers will be drawn, as compared with those who will belong to the administrative classes:—

	Year.	
Children attending Elementary Schools in England and Wales	1912-1913	... 6,085,828
Children attending Secondary Schools (exclusive of Technical Schools) in England and Wales	1912-1913	... 195,484
Estimated number of Students at Universities for	1913-1914	... 25,150

Claims of Workers for Recognition.

Church and nation are faced with the fact that a huge class of people whose eyes are opened to the possibility of a wider mental horizon, and generally a fuller life, are questioning the old standards of authority and are discontented with the present condition of things; and the tendency is for this mass of people to claim an ever-increasing share in the direction of affairs. It is futile to close one's eyes to the fact that the greater solidarity of workers is making it possible for them to force their claims upon

any government, and it is probably not an exaggeration to say that never in the world's history has it been more necessary than at present to enlist the active sympathies of the great mass of the people on the side of religion and order, if the recognised standards of civilisation are to be maintained and improved upon.

Old Ideals Questioned.

In the past a small proportion of the nation has assumed the direction of affairs and on the whole the policy has been for the good of the people, but now this policy is seriously questioned by those who realise that a readjustment of the relationships of "governors" and "governed" is a necessity of modern life. The workers have neither personal knowledge of, nor sufficient confidence in the honesty of purpose of, the administrative classes to be able to acquiesce unquestioningly in their decision.

Separation of "Classes."

On the other side, with the best intentions, the administrative classes are largely ignorant of the modern spirit and the aspirations of the workers, and they underrate the ethical driving force of the revolutionary ideas, and are apt to regard labour aspirations with hostility and suspicion rather than with sympathy and hope. This separation of classes is a national calamity, and it is essential that the mutual mistrust should be broken down, and sympathetic personal contact between the various sections of the community should be restored. This cannot be done unless ideals of mutual responsibility and duty replace the present condition of things, and, apparently, the tendency in the political sphere is towards dissociation or even anarchy rather than towards co-operation and unity. In the Church, however, a hopeful beginning has been made, and, although the difficulties are great and should not be minimised, the opportunity for influencing the economic aspirations of the people by religious ideals is greater than at any period since the Reformation. Notwithstanding much bitterness against religion and hatred of the Church there is a strong undercurrent of real religion in the workers' minds, although the State recognition of the Anglican body is a stumbling-block to many honest people, who cannot perceive any such difference in kind between the Church and the sects considered as religious bodies.

Archbishops' Finance Scheme and Representation.

An almost excessive belief in the value of representative government has developed, and the Archbishops' Finance Scheme has raised a definite issue in this respect so far as the members of the working classes who are earnest Church workers are concerned. The Finance Scheme advocates consistent financial support of the Church by all Church people, and it is only just

that those who provide the money should have a say in the business management. The great proportion of those who will become subscribers have not any chance of attending meetings at a distance, mainly on account of the expense which would be incurred, but they would certainly take a keener interest in the scheme, and in all the wider issues of corporate Church life, if they were represented in the Central Councils of the Church by one of their own class. Class-consciousness is a very real sentiment, and the workers will not be satisfied with any administration in which they have not a voice; mere selection by the authorities of the Church of apparently suitable advisers will not meet the needs of the case. What is needed both in Church and State is not that brilliant or fortunate individuals may be lifted into another class, but that the working classes may be recognised through their representatives as an active thinking part of the corporate whole, and this can be done only through some form of election.

Parochial, Ruri-decanal and Diocesan Councils. Houses of Laymen and Representative Church Council.

The elections of members to the Parochial, Ruri-decanal and Diocesan Councils should be as arranged at the 1914 meeting of the Representative Church Council, as it is not advisable to interfere in any way with the methods passed by that assembly. The following suggestions are put forward as a possible auxiliary method for the time being until representation of the working classes in the highest assemblies becomes a recognised part of the policy and practice of the Church, and are not intended in any way to supplant or supersede the recognised method.

There are many societies, such as the Church of England Men's Society, the Sunday School Associations, and the Lay Readers' Societies, which are in touch with the work of men who have not been elected to the Ruri-decanal Conferences because they are not able to attend the meetings, or in some way are tied up by their own particular Church work, but whose advice on the Representative Church Council would be of great value. Although such individuals may not be members of the lower representative councils their views are those of the majority of communicants, and, on matters of practical working, are the most valued lay assistants of town vicars, and the success of many parishes is largely due to men of this type. No one can say that their point of view is adequately voiced in the Houses of Laymen or in the Representative Church Council, and the following suggestions might possibly be considered to satisfy the spirit of the "electoral" ideal sufficiently to provide a temporary method for obtaining representation of the bulk of Church people on the higher representative bodies:—

Indirect Election for a Proportion of Places in the Houses of Laymen.

(1) The Diocesan Conferences to reserve a fixed proportion of the number of their representatives on the Houses of Laymen for men whose income is below the level at which income tax is levied.

(2) The Bishop of each diocese to invite nominations of suitable men from bodies similar to the Church of England Men's Society, the Lay Readers' Societies, the Sunday School Unions, &c., &c.; the names to be submitted to the Diocesan Conference for election. The names submitted need not necessarily be those of men who are members of Parochial, Ruri-decanal or Diocesan Councils or Conferences. As far as possible the names should be submitted by lay societies.

Expenses.

(3) Out-of-pocket expenses, and a proportion of the wages lost whilst attending conferences, to be guaranteed to such men from a diocesan fund. It would not be wise to have the expenses of a working-class representative defrayed by any one person directly; all payments should be made from an impersonal source in order to prevent any sense of obligation to an individual and consequent deference to his wishes on the part of the payee.

Agricultural Workers.

The above suggestions refer to manufacturing centres, but the writer is of the opinion that the principle is applicable in some degree to rural areas, and in view of recent developments in transit and the formation of agricultural labourers' unions, &c., he thinks the difference between the town worker and the country worker shows every sign of lessening, and, therefore, there is hope that the problem of legislating for the two different types of workers will be much simplified in the future. It should be borne in mind that the laity as a whole have only a weak sense of their responsibility towards the Church, and careful education of the working-class laity is necessary in order that the growing desire for constructive work may be fostered and not allowed to be perverted into blind criticism of things and offices as they exist. On the other hand there are many good men who are not in the least self-seeking, whose experience and outlook on life would be of the greatest value in the administration of the Church, and who would be proud to place themselves at the service of their fellow-Churchmen and Churchwomen in any capacity, if a reasonable opportunity presented itself.

H. E. Kemp.

IV. (A).—THE REPRESENTATION OF TEACHERS AND STUDENTS.

1. One of the greatest facts in modern times has been the growth of universities. During the last fifty years the number of students at Oxford and Cambridge has increased threefold. At Oxford the number of men taking honours in 1914 was 563, in 1864, 132. There are now 18 Universities, 10 University Colleges, and 8 Women's Colleges in the British Isles, and many training and technical Colleges. The teachers in these institutions amount to thousands in number. This constitutes a great development. When a similar educational development stirred Christendom in the 12th, 13th, and 14th centuries, room was found for representatives of universities to sit in the great Councils. At the present day the Student Christian Movement is world-wide, and has increased its membership in our country from 3,000 to 10,000 in the last fifteen years. This shows what an opportunity is here offered to the Church.

2. The development of education in the years after 1870 was disastrously one-sided, for it was not merely secular in tone but pronouncedly materialist. But now many of the best among the teachers and students are notably in sympathy with the Church, and are asking of the Church both recognition and leadership. They represent the future, and this is true more than ever under the intensity of conviction, which is being engendered by the present war, and which is producing an intellectual or rather a spiritual awakening unexampled since the 17th century.

3. One of the most striking signs about the religious thought of modern times is the sympathy and interest with which it turns to the study of the past. The historical method has in this way done much for the Church, widening for its members their range of view, re-establishing their sense of continuity, and helping to equip them better for such problems as the evangelising of India and China or the recapture of the masses of our own population. But the exact value of historical origins and analogies cannot be settled by a hard-and-fast rule; the past may be an incubus as well as an inspiration; it needs above all an unsparing exactitude of study and a practised habit of judgment. It seems reasonable therefore that in Church Councils of the future there should be some security for the presence of persons engaged in such studies, and that this should not be left to the tender mercies of elections on a "territorial basis."

4. Teachers and students comprise a large proportion of those who are going to constitute the organising and directive leaders of the many movements now well established or being started in

the industrial world for the purpose of social betterment. These movements have to a large extent been allowed to get detached from the Church. One reason of this has been that the training of the clergy has included but little training in the theory and problems of what may be called social science, a subject which is coming forward more prominently every year in a university curriculum, and one which is of greater importance than ever in view of the momentous social issues already being raised by the war. Is the great and growing class of inquirers and workers now engaged on these social studies to be allowed to slip through for lack of any invitation from the Church?

5. It was pointed out in the Report (presented to Convocation 1902) on the position of the laity, that "the tendency of modern legislation has been . . . . to minimise almost to the point of obliteration the direct influence of the Church laity as such upon the government of Church affairs." Illustrations of this result are taken from financial affairs, poor relief, and education. This has become all the more conspicuous through the contrast afforded by the position of the laity, "a distinct position of right and responsibility," in the sister Churches of America, Ireland, Scotland, and the daughter Churches throughout the Dominions. The Report therefore strongly urges that the lay Churchmen in every parish and in every diocese, and in the country as a whole, should have a legal position assured to them whereby they might be consulted on questions of education *inter alia*, and be enabled to give effect to their wishes through their participation in the legislative assembly. To an ordinary layman the natural way to secure that this voice of Churchmen who are educationists should be heard on educational questions, would seem to be the assigning to them as such a certain representation in that assembly.

6. The avowed object of our Report is to increase and to render articulate the corporate action of the Church. We have rested the claim for the Established Church on a principle that applies also to other Churches and corporate bodies, the principle that the State in its great unity and authority ought to include, and does in fact include, a great number of subordinate but free corporations, each exercising in its own sphere authority over its members, while all of them obey the State which includes and, in its own general sphere, rules them all. (See the Bishop of Oxford's "Memorandum [Appendix VIII.] on the Fundamental Idea of the Spiritual Independence of the Church.")

No one who studies the movements of thought can doubt that this principle of corporateness is now in a stage of rapid growth, and that a number of influences of the last eight months are stimulating that growth. The Church cannot well use the principle of corporateness to claim a wider freedom for itself and in the same moment deny the validity of the principle when invoked

on behalf of a large, a growing, and an unrepresented element in its own constitution.

The objections to the proposal seem to turn partly on its "novelty," partly on a dictum that "representation is on a territorial basis," and that this proposal would mar its symmetry.

Such objections, had they emanated from distinctively academic quarters, would have been promptly described as pedantic and timid, or, in a word, academic. They are certainly not easy to reconcile with the very principles which they profess to be defending. For what can be more unrepresentative than to leave unrepresented a body which is living and organic, and conscious that it is so? What can be more novel than to take the accidental defects of a system and stereotype them as the mould for its future? Can it be seriously maintained that a merely territorial division is an adequate and an ideal basis for religious organisations? Is the Church to be intimidated by technical objections of this sort into standing aside from such loyal supporters, and refusing to make room for them at the very moment when it is forming a new scheme of representation, and appealing to the country with a claim that this representation is real and complete? If this is to be the case, the Committee should be prepared for their Report being treated by a large and increasing body of not unintelligent persons as a disappointing document.

A. L. Smith.

IV. (B.)—RELATION OF THE STUDENT CHRISTIAN MOVEMENT TO THE CHURCH.

A letter from one intimately acquainted with the movement:—

"I personally have witnessed a great change take place in the student field in this country. Religious interest in the colleges when I first entered the service of the Student Movement in 1898 seemed to me to be at a very low ebb. All the new universities were without any religious organisations among the students, and the drift was in an agnostic and sceptical direction as regards those students who thought about the meaning of life. The great majority did not appear to think at all, and were concerned with getting through their classes and qualifying for earning a living. The Student Christian Movement, I should think, cannot have numbered more than about 3,000 men and women. I have seen a great change take place. The Student Movement now numbers 10,000. That is the number of those who have definitely joined the Christian Union, and by so doing have declared their belief in our Lord and their desire to follow Him. In addition to these

there are thousands more who come under the influence of the Christian Union. The drift away from Christianity has been, I think, entirely arrested in the case of those who enter the new universities from Christian homes. Hundreds every year who come up indifferent to Christianity leave college believers, and there is no subject which is of greater interest to students to-day than the Christian faith. Recently at two universities I asked the question, 'What is the most common topic of conversation in your college?' In each case the answer was the same, 'Oh, religion.'

"College men nowadays take things much less on trust than they were prepared to do some years ago, it seems to me. They are more questioning and more critical. I think it is because there is more life. The religious movement of the colleges has grown steadily richer as the years have passed, and now it is possible to find thousands of men and women who are interested in the extension of the kingdom at home and abroad, and in the life and belief of the Church. The student class as a whole is very critical of organised Christianity. As a class they are apt to be specially interested in the intellectual presentation of Christianity, and the impression which clergy and ministers make upon them under this head is very unsatisfactory.

"Thousands and thousands of college men and women wander round the cities where they are staying into every kind of church and chapel in the hope of finding a man who will help them to understand the Christian faith. The Church of England Clergy come very poorly out of this ordeal from the student point of view. I think Presbyterians do best. Students are also very critical of the Church from the point of view of fellowship. The summer conferences and Christian Unions of the movement give them a taste for Christian fellowship, and large numbers of them resent the fact that the Church seems to have less to offer them than the Christian Union has in this direction. Also, large numbers of students are interested in big questions, like the labour movement, the women's movement, and many aspects of the social problem. They would like these questions, which they regard as burning questions, faced by the Church, and they would like to see the Church give a lead. It seems to many of them that the Church as a rule tends to take a safe and middle course, funking burning questions. It does not strengthen their affection or loyalty to the Church that she seems afraid of handling burning questions courageously and righteously. To the best of the men and women in the colleges it appears that it is the business of the Church to take up questions just because they are burning questions. I am always being told in the colleges that the Christian Church is on its trial. That is not the view of the leaders of the branches of the Student Movement in the colleges.

"On the whole they have been well instructed by the movement, and they are continually defending the Church to their more

radical friends who are on the fringe of the Christian Union. Often they have to carry on their defence of the Church with the uneasy consciousness that a great many of the accusations brought against her are true. The opportunity the Church has to win the student class to-day fills me with enthusiasm, but my ardour is constantly damped as I think on the one hand of what students need, and on the other hand of what in actual fact the Church offers them. We need more men who can preach the gospel to the student class. We need a more courageous handling of burning questions. We need a richer spiritual fellowship to offer.

"This spiritual movement which is going on among the students of this country is making headway in every country in the world, with extraordinary rapidity in some countries like China, with rapidly increasing rapidity in countries like France, with a steady growth in the Scandinavian countries and Holland, with slow growth in some of the Latin countries such as South America and Italy. But the spirit of God is at work among the students of the world to-day. There is no doubt about that."

APPENDIX X.

MEMORANDUM BY DR. FRERE ON CANONICAL LEGISLATION.

I.—It is necessary in the framing of any new scheme of Church legislation to consider the making of canons, and the relation of any new Church Council to the Convocations in the matter of their enactment.

It is by securing adequate facilities for canonical legislation that the spiritual independence of the Church can best be assured. Legislation by canon is the tradition of the English Church; therefore in trying to assure its independence by this means, there will be a maximum of continuity and a minimum of innovation. Legislation by canon is also the universal practice of sister and daughter Churches; and their canons form the very basis on which they rest. No reform, therefore, could be more consonant with the past history of the Church of England and with modern needs, than one which would recover for it these powers of Church legislation in an effective form: and this recovery affords the best foundation on which to ground any new plans.

It is also necessary to keep in view the threefold nature of Church law and the three degrees of obligation imposed by it. These may be roughly defined thus:—

(1) There is the law which the Church as a society lays down for individuals as its members, and which they are bound by their membership to obey.

This obligation is the basis of all early and medieval theory. No doubt in the past it has been strained almost, or entirely, to breaking point at various epochs in the Church's history, but at present there is no danger of this. The obligation cannot now become burdensome to the individual, because in the existing state of Christendom a dissatisfied member can without difficulty surrender his membership or exchange it for the membership of some other body.

(2) There is the Church law which is accepted by the State, and recognised as binding Church members in the Spiritual sphere, and as being enforceable by Spiritual penalties.

The obligation in this case is a double one; for to the prescription of the Church the State lends the weight of its civil authority, and the member is thus bound by the law in the eyes of both Church and State alike. Such a state of co-operation seems to be one of the essential elements in the position of an "Established Church."

(3) There is the Church law, which is not only accepted and recognised by the State, but is also enforced by coercive penalties to be inflicted by the secular arm.

The obligation here is threefold, for there is besides the other two inducements to obedience, the further incentive of the avoidance of civil penalty.[1]

In England the National Church has from the beginning exemplified all these three aspects of Church law. At times it has allowed the second and third (or even the third only) to overshadow the first. But the first aspect is the really fundamental one, while the others are subsidiary; and it is the first that needs emphasis now.

II.—The obligation of the canon law on all members of the English Church was, broadly speaking, recognised universally in the Middle Ages; and not only by the members, but by the civil power also. Apart from certain cases where the State exercised a tacit or explicit veto against the canonical regulation, on the ground that it conflicted with the secular law, the general support of the Crown and the governmental and judicial authorities of the State was given to the law of the Church, and to the administration of that law in the church courts. In certain cases the State went the further step, and lent its coercive power to the enforcement of the law; but such cases, though conspicuous, did not form a large proportion of the whole. For the most part the canon law was of binding force by its moral obligation and its own purely spiritual discipline, as recognised by the State.

In ecclesiastical, as distinct from spiritual, matters, that is in matters of mixed jurisdiction, some *modus vivendi* was devised between Church and State; but these are not what we are now considering. They must be discussed later, and will be settled by Church and State, according to the new method of harmonious working which is being devised.

In spiritual matters the laity, being as much members of the

[1] *cf.* Bishop Stubbs in *Ecclesiastical Courts Commission Report* (1883), p. 22, and the acceptance of this in the Report of the Commissioners, *ibid.*, p. xiv.

society as the clergy, were *mutatis mutandis* as much bound as they. The body of legislation applicable to them was naturally much smaller in bulk, but it was of great importance; and many spheres of lay activity, which are now regulated by State law, were then wholly or in part regulated by Church law.

This view of the relation of each member to the society and its laws continued to be a dominant one till the beginning of the eighteenth century. It is the view upon which the Reformation settlement depended. But in the seventeenth century it was much contested, and in the eighteenth century it was overpowered by a rival doctrine, viz., that the laity are not bound in obedience to Church law as such, but only on other grounds—*e.g.*, in so far as it had been received by custom or corroborated by Parliamentary statute. The triumph of this view has had several evil consequences. For example—(i.) it has weakened, or almost obliterated, the sense of obedience or loyalty to Church law as such, which is, or should be, implicit in membership; and (ii.) it has had the practical effect of reducing a large part of the existing canon law to impotence, and making reform of the unsatisfactory or obsolete laws, and the provision by the Church of new ones affecting the laity, almost impossible.

Since one of the primary objects of our enquiry is the recovery of a right and convenient method of Church legislation, backed by an effective administration, and met by a loyal sense of obligation to the laws of the Church on the part of clergy and laity alike, it will be useful to recall the main features of the history of the change in political theory which has brought the relations of Church and State, so far as their respective branches of law are concerned, into the present unsatisfactory position.

III.—In any alliance of Church and State there are some who will place the chief emphasis on one side of the bargain, and others who will place it on the other side. There are some who make much of the action of "the Prince" or "the people," and regard this as the force which makes the compact really authoritative; others who magnify the Church's authority, and make much of the duty of obedience from the member to the Divine Society and its authorities. In some periods, such as those of Justinian or Charlemagne, or our own later Anglo-Saxon era, the first view was the prominent one. Another such period was that of the Tudors: and, in consequence of the repudiation in England of the authority of the Papacy, the view in question received great reinforcement. In the later days of Henry VIII. or under Elizabeth it was held that the assent of the Prince to canonical legislation was as necessary as it was to civil legislation: and that it was as effective also. The Bill in Parliament is a petition to the Crown, and it is effective only when *Le Roy le veult*. The canon of a Convocation or Synod, has, in a sense, a more independent existence

than a Bill in Parliament. It may have some force of its own, and some effect: but it was at that period agreed that it should not have full force nor State recognition until it had the assent of the Sovereign.

Thus in the place of the possibility of a tacit, but effective, veto of the Crown on canonical legislation, there was placed the necessity of an explicit royal approval. This was brought about by the submission of the Clergy in Convocation on May 15, 1532, when they agreed

> "that no constitution or ordinance shall be hereafter by the clergy enacted, promulged, or put in execution, unless the King's Highness do approve the same by his high authority and royal assent, and his advice and favour be also interponed for the execution of every such constitution among his Highness' subjects."

At the same time they assented to the scheme of the *Reformatio Legum*, to be carried out by a mixed body of the temporalty and of the clergy, and submitted for the royal assent.

At the ensuing session of Parliament, nine months later, all this was embodied in the Act 25 Henry VIII., c. 19, with a very important proviso (representing a condition that the Bishop of Lincoln had made in giving his assent to the matter in Convocation) that, pending the work of revision, the old Canons, so far as they were unexceptionable, should remain in force.

Thus the normal proceeding for the future was to be by canon of Convocation to be approved by the Crown: the exceptional proceeding of the moment was the preparation by the 32 Commissioners, under joint authority of Convocation and Parliament, of a revised code drawn out of the already existing Canons, which should become effective, like new canons, on receiving the royal assent. No Parliamentary confirmation was required for the Canons themselves, either old or new: their authority was secured by the co-operation of Convocation and Crown. Thus a very accurate balance was struck in the relations of the Crown and the civil and ecclesiastical assemblies. But it was easier to strike the balance than to preserve it.

IV.—Convocation was busy making canons in the year 1571 (when the failure of the project of the *Reformatio Legum* seemed certain), again in 1575-6, in 1585, in 1597-8, in 1604, in 1606, and in 1640. Also the efforts made in 1662 and 1689, though abortive, are important and illuminating.

The *Liber Canonum* of 1571 was revised by the Queen, but never received her formal approbation. It was, however, published in several editions, treated as in some sense authoritative, and executed

in some degree, at any rate in the Southern Province.[1] The Articles of 1575-6 emanated from the same Province, and were "published by the Queen's Majesty's authority." Two Articles, that formed part of the set as submitted to the Queen, were apparently disallowed.[2] Those of 1585 were also Canterbury Articles, but *regia auctoritate approbati et confirmati*.[3] Like the first set, and unlike the second, they were concerned with the discipline of the laity as well as of the clergy. The *Capitula sive Constitutiones Ecclesiasticæ* of 1597-8 had apparently the fullest measure of approbation, for they were authorised by letters patent for both Provinces, January 8, 1598.[4]

While Convocation and the Crown had thus been building up the fabric of canonical legislation, an incipient attack upon their work and its authority over the laity had been gathering force from several quarters. There was the opposition of those among the laity who wished for no Church discipline, and the opposition of those who wished to substitute a presbyterian discipline for the existing episcopal system. There was the dissatisfaction of those who wished to secure a much more drastic reform of the prevailing discipline. There were the jealousies of the rival sides of the legal profession, and the jealousies between Parliament and Convocation. All these tendencies united with other and more creditable forces, and especially the new Parliamentary ideals for limiting the personal power of the Prince and enlarging the powers of the Commons.

As long as a Tudor sovereign reigned, these elements of agitation were kept in check, and the balance was maintained. Parliament was restricted to its own sphere: the timid bishops were encouraged to act on their own authority. But all this became increasingly difficult; and in fact, in face of the opposition, the Church came to rely more and more upon the backing of the State. Two instances of this stand out conspicuously in Elizabeth's time, the first in the judicial, and the second in the legislative sphere:—

(i.) The High Commission was more effective than the ordinary ecclesiastical courts, because of its derivation of power from the Crown, and because of the coercion that it could employ. It therefore tended to supersede the regular courts; and the enforcement of Church discipline passed from them (at any rate in cases where much opposition was to be expected) into the hands of Royal Commissioners.

(ii.) An interesting example of the appeal of the Church to Parliament for its backing is to be seen in the Act 27 Eliz., c. 28.

[1] Collins, *Canons of 1571*. (S.P.C.K., for Church Historical Society, 1899.)
[2] Cardwell, *Synodalia*, 132, 540.
[3] *ibid.*, 139, 555.
[4] *ibid.*, 147, 580.

Till then the collection of the subsidies granted by the clergy in Convocation had been backed only by spiritual authority, and enforced by spiritual censures. But these proving inadequate, Parliament was invoked to strengthen the hands of the collectors by adding the coercive force of temporal penalties. The occurrence exemplifies the growing tendency of the Church to look to the State for help in enforcing its discipline over its members. But it also brings out another point which is much to our purpose. It shows that when Convocation appeals to Parliament for its co-operation it does so, not in order to make binding on the laity what would otherwise bind only the clergy, but in order to supplement its own powers of spiritual discipline by the coercive power of the State.

V.—When James came to the throne, however, all this began to change. The strong hand that kept the balance was gone, and the forces that were hostile to Convocation and its canons began to have a better chance. One of the first successes to be gained by them was the imposition of a new restraint upon the making of canons. In 1610 the Judges informed a Committee of the House of Lords[1] that a Convocation, after its assembly, "cannot confer together to constitute any canons without licence *del Roy*." This view made it necessary that Convocation should have not only the *licentiam ad tractandum, consentiendum et concludendum super quibusdam arduis negotiis*, which it had by being summoned, but also a special further licence if canons were to be passed. There is no sign of any such requirement having been made in the reign of Elizabeth in connection with the four sets of disciplinary canons which were drawn up then. The only licences issued to Convocation preliminary to taking action were given in connection with the means which it adopted for the collection of its subsidies; and when there was a preliminary licence, no subsequent assent seems to have been necessary. One permission, either preliminary or subsequent, satisfied the necessary condition of the royal approval.[2] But in the Convocation of 1603-4, for the first time, there appears the record of a preliminary *licentia regia canones condendi* as well as a subsequent approval, and two permissions were made necessary. Thus it seems that a curb had been added to the already existing snaffle.

VI.—There is a further interest attaching to this Report of the Judges in 1610. For some years the Parliamentary party which supported the Presbyterians had been trying to say that canons of Convocation ought not in themselves to bind the laity, they being unrepresented there; and that such canons needed Parlia-

[1] Coke, *Reports*, xii., 72.

[2] The procedure is more fully given in the records of York than of Canterbury. See *Records of the Northern Convocation* (Surtees Soc., cxiii.), pp. 260 and ff.

mentary confirmation if they were to do so.[1] A reply to this novel theory may be seen in the 140th Canon of 1604:—

> "Whosoever shall affirm that no manner of person either of the clergy or laity, not being themselves particularly assembled in the said sacred synod, are to be subject to the decrees thereof in causes ecclesiastical (made and ratified by the King's Majesty's supreme authority) as not having given their voices to them, let him be excommunicated and not restored until he repent, and publicly revoke that his wicked error."

The York Convocation Records show a further insistence on the point; for in the course of adopting in 1606 the Canons framed by the Southern Convocation in 1604, the Northern Houses twice repeat that the Canons are to be "equallie kepte by all and singular persons, not onelie of the clergie but of the laytie."[2]

Undaunted by the canon, the upholders of the rival theory brought a Bill into the Parliament of 1606 to make Parliamentary confirmation of the Canons necessary.[3] It passed the Commons, and was sent up to the Lords on May 3, but there it ended. A further attempt in the next Session was equally unsuccessful.

Failing in these attempts, they tried to secure from the Law Courts what they had not been able to get through Parliament. The matter came up this year (1607) in the case of *Bird* v. *Smith*,[4] but the decision of Lord Ellesmere, Coke, and others was to the contrary: "Ils resolve que les Canons del Eglise fait per le Convocacion et le Roy sans Parliament lieront en touts matters ecclesiastical cy bien comme Act de Parliament." And again, in a passage showing that clergy cannot sit in Parliament: "per que quant the Convocation fait canons de chose appertaining al eux et le Roy eux confirm, ils lieront tout le Realm."

The attack was renewed in the Parliament of 1610, again without success.[5] But the sending up then of the Bill to the Lords produced several days' conference, and an explanation in the King's speech at the prorogation of the reasons for not passing a Bill on the subject. The proposal also led up to the above-mentioned pronouncement of the Judges. It is significant that this, in dealing with the powers and position of

[1] The beginnings of this may be seen in Grindal's letter to Parker of 1571 (Cardwell, *Synodalia*, 112 n.). Later on, when he was at Canterbury, a proposal was made in Convocation for obtaining Parliamentary confirmation for some of the Articles of 1575, which were already in force. But the project came to nothing. (Cardwell, *ibid.*, 543.)

[2] *Rec. of N. Convoc.*, 280, 288.

[3] Usher, *Reconstruction*, ii., 124.

[4] Moore, 781.

[5] Usher, ii., 247, 258. The Bill and a letter on the subject from Abp. Bancroft to the King are printed in Dalrymple, *Memorials and Letters . . . of James I.*, p. 28.

Convocation, gave no support to the theory that Parliamentary confirmation was necessary for canons that were to bind the laity. It was presumably implied that such a restriction did not already exist, and consequently needed to be newly sought from Parliament, since neither of the two judicial pronouncements had established it as the existing law.

There are some signs that Coke himself was further interested in the question. Appended to his Report of the Reply of the Judges are three notes,[1] which appear to form part of an early attempt to construct a legal case in favour of the restriction that was being urged. The notes are obscure and not very trustworthy, like much else in the posthumous Reports of Coke, but they were taken to be part of the Report itself and had a considerable importance later on; therefore they must be noted now.

The first, referring to 2 Henry VI., 13, says:—

> "A Convocation may make constitutions by which those of the spirituality shall be bound, for this that they all, or by representation, or in person, are present, but not the temporalty."

The second refers to 21 Edward IV., 47, and to some law cases under Henry VIII. and Elizabeth.

The third Note seems to contradict the first; for, while saying that an Act of Parliament is necessary for any alteration of the law, it adds the exception—

> "except for Spiritual causes, or which concern Spiritual persons."

Nothing came of these attempts at the moment. The Bill failed again in 1614; the laity continued to be subject to the Canons, as contemporary records plainly show.[2] But once again the subject was revived in the controversy between Convocation and the Long Parliament in 1640, and a resolution was passed by the Commons (December 15), which went so far as to say that Parliamentary confirmation of canons was necessary before they became binding, not only on laity but even on clergy.[3] This attempt to extend the claim of Parliament may possibly have been meant not only as a development of the old policy, but also in some respects as a reply to the privileges of Convocation as stated in the Declaration prefixed by Charles I. to the XXXIX. Articles.

VII.—After the Restoration the resolution of the Long Parliament was not followed, but it had its effect nevertheless. When

[1] *Reports*, xii., 72.

[2] Usher, ii., 117. Hale, *Precedents*, pp. 245, 247, 259, 261. Surtees Soc., xxxiv., 48, 183.

[3] Cardwell, *Synodalia*, i., 385.

the matter was raised in the case of *Grove* v. *Elliot*, in 1670,[1] the Judges were divided upon the point. Lord Chief Justice Vaughan said that "The Convocation . . . . may make canons for the regulation of the Church, and that as well concerning Laicks as Ecclesiasticks," thus carrying on the old tradition: but Justice Tyrrell dissented.[2] Not very long after, in 1678, a new case arose[3] in which the old view was reasserted, and it was held that the Canons bound a schoolmaster. But after the Revolution the atmosphere was different, and in the altered conditions the way was opened for Lord Chief Justice Holt to give authority to the rival view by an *obiter dictum* in the case of *Bishop of St. Davids* v. *Lucy*,[4] 1700. Other decisions followed tending in the same direction, though the old view survived among ecclesiastical lawyers such as Gibson.[5] Finally, however, all led up to Lord Hardwicke's famous judgment of 1736 in the case of *Middleton* v. *Crofts*.[6]

That judgment gives a long review of the matter so far as legal decisions are concerned; but it takes no account of the case in 1678; nor does it notice the important Parliamentary action in 1606, 1610, 1614, and 1640, nor, strangely enough, does it allude to the 140th Canon of 1604. The decision of 1607 it sets aside "as a very extraordinary case, and the decree such a one as would not be allowed as a precedent at this day."[7]

The third note of Coke, with its exception, was also dismissed,—as unintelligible. On the other hand, a great deal of stress was laid on the pre-Reformation cases quoted by Coke from the Year Books in his first and second notes, and to the commentary which Coke gave in the first. Nowadays the anachronism of assigning to the fifteenth century the view that canons needed Parliamentary confirmation would be too patent to mislead anyone who had any knowledge of that period: but the two notes seem to have misled Lord Hardwicke (as perhaps they also misled Lord Chief Justice Holt before him): and having the whole historical perspective thus upset, he did not observe that the doctrine in question had only gradually forced its way in since the Restoration or even since the Revolution.

[1] 2 Vent., 41.

[2] The attack on the Canons was based upon Coke's Report. Four Judges gave decisions, and that of Archer seems to agree with Vaughan on this point. Vaughan also gave what was apparently the same decision, though not adequately reported, in *Hill* v. *Good* (Vaughan, 327).

[3] *Cory* v. *Pepper*, 30 Car. II. (Levinz ii., 222).

[4] Carthew, 485. [The Canons] must be confirmed by the Parliament to bind the laity.

[5] *cf.* Gibson, *Codex*, 974*, 995.

[6] 2 Atkyns, 650.

[7] Hardwicke also declared, in interpreting Ellesmere's decision, that "it is not expressly said they can bind the laity, nor declared in words what persons they can bind."

The case to which Coke appended his first Note (if it really was his)[1] is usually known as the case of the Prior of Leeds. But this is a mistake: there was no such person; and the Prior of Lewes is meant. It arose (like a good deal of other trouble) out of the custom of Convocation to appoint certain persons to collect the subsidy granted to the Crown, and the custom of the Crown to grant letters patent of exemption from the duty of collecting.[2] The prior had such a patent; and, on the strength of it, he did not collect the subsidy at the bidding of Convocation. This conflict of authorities puzzled the Barons of the Exchequer; and the puzzle was referred to a meeting of the Lord Chancellor and the Judges. The discussion was a good deal occupied with the question whether such action of Convocation was spiritual or temporal, and whether Convocation having only spiritual power could have any effect on letters patent, which are temporal.

Whatever else may be said about the case, it was apparently undecided, and it was only an incidental remark of Justice Newton[3] in the middle of a speech of Lord Chief Justice Hody, on which the note in Coke's Report, and those who were influenced by it, relied. Further, it may be safely asserted, in view of the contemporary history, and the subsequent history summarised above, that this remark was no authoritative pronouncement on the question whether the Canons of Convocation bound the laity or not. That question was entirely alien to the case, and, indeed, was probably one that was alien altogether to men of that generation. All through this case, and the similar case later of the Abbot of Waltham,[4] the antithesis, spiritual *versus* temporal, refers not to clergy as contrasted with laity, but to the spiritual character of the action of the Convocation as contrasted with the temporal character of the letters patent of the King.

VIII.—This historical retrospect was necessary in order to make clear the process by which the effective power of the Canons over the laity was destroyed in the eighteenth century.

Another blow was dealt at the spiritual independence of the Church, when, after an abortive attempt at framing fresh canons in 1689, the Houses of Convocation fell into internal quarrels, and

[1] It is difficult to suppose that the dictum—words which seem to be meant as an interpretation of this case—was Coke's own; for he apparently joined with Lord Ellesmere in the judgment given in the opposite sense in the case of *Bird* v. *Smith* (*ut supra*). Besides, these Reports (Part XII.) are notoriously inexact, and their connexion with Coke is uncertain.

[2] See *e.g.*, the Acts 9 Henry V., cap. 9, and 4 Henry VII., cap. 5.

[3] The passage runs as follows (Harl. MS. 4557, f. 249): "L'Ordinare par son conuocation ad poair de faire holydaies et fastyngdaies mes nein de allower ou disallower lez patentz le Roy mes queils ount poair de faire customez prouincialx par quels ceux de saynt eglis seront liez unquore ils ne poient faire ascun chose que liera le temporalite, etc."

[4] 21 Edward IV. (Mich.) in *Les Ans ou Reports del Rayne du roy Edward le quart* (London, 1599), f. 44.

then ceased to meet for effective business. When 120 years later the Convocation was revived, it had lost continuity, and its old conditions and qualities were not well suited to modern surroundings. Nevertheless, in spite of such drawbacks, Convocation has recovered something of canonical legislation. Though the comprehensive revision of the Code of 1604 which was undertaken in 1863 proved abortive, some individual canons concerning the clergy have been made concurrently with Parliament, which have kept the tradition open. The moment has now come for the fuller recovery by the Church of its power of legislation.

If it is to be restored, as is certainly necessary, it need not be built up on the same lines. The medieval theory, or practice, which made the clergy the sole legislators for the Church, is not one that can be defended now. Far better is the earlier principle of the Church, "*Quod omnes tangit, ab omnibus probetur.*" There was, then, considerable moral justification for the view that prevailed in the eighteenth century, in spite of the tortuous way by which it ultimately won its victory. Provided that (i.) the Convocation had assented to the new view and dropped its 140th Canon, and (ii.) the Parliament was and continued to be a satisfactory representative of the laity of the Church, there would be little to be said against it. But neither of these conditions was, or is now, fulfilled; consequently it is necessary that not only should a body be set up that will satisfactorily represent the laity, but also that this body should have its powers and part in the making of canons defined, and its relation to the Houses of Convocation in this respect made clear, since it is in them that the present power resides.

IX.—These considerations point to two proposals:—

(1) That the new Church Council should have the power of making canons (under whatever safeguards are necessary), analogous to that which belongs to the Convocation within their several provinces.

(2) That canons so passed must have the royal assent, but need not be submitted to Parliament unless they deal with temporal matters, or conflict with any statute; in which case they should only have the force of law after going through the Parliamentary process elsewhere described.[1]

This method is in accordance with the Reformation settlement, and represents the recovery of a proper autonomy with a minimum of change. The Church should be free to legislate by canon within the spiritual area which is not covered by statutory legis-

[1] The Ecclesiastical Committee of the Privy Council there proposed would serve also to advise the Crown as to the royal assent, and to determine which canons needed to be laid before Parliament.

lation. It should also have facilities for legislating with concurrence of Parliament within the area that is so covered, even to the extent of altering or diminishing that area. Even so it would only have a very limited autonomy, since the final sanction or rejection would always rest with the State in one form or another. It is the least that the Church can ask.

The effect would be that such Canons fell into one or other of the categories defined above: either (1) they would be simply orders of the Church issued on its own authority for the direction of church members; or (2) backed by the royal assent, they would have a definite recognition from the State, and further, if approved by Parliament according to procedure elsewhere described, they would also have the force of an Act of Parliament; while (3) there might also be cases in which it was desirable that legislation, so made by both Church and State, should be enforced by coercive penalties.

X.—If the correlative question is raised, as it must be, concerning the best policy for the Church to adopt in regard to the binding force which its canons should have behind them, and the best methods of securing a recognition of them by clergy and laity, and, if need be, of enforcing them, several alternative answers are possible. It is clear that in themselves they would be backed by no express coercive force, supplied *ipso facto* by the State. But so long as the Church is established, it may claim that its canons, when lawfully made and promulged under these agreed conditions, should be recognised by the State as binding upon professing members, even though the State attaches no penalty to the breach of them. This recognition it would have the right to claim. But, on the other hand, it is conceivable that the Church, even remaining in other respects "Established," might be ready in this respect to forgo the claim, and to be as a non-established Church, exercising only a purely consensual discipline.

We come thus to another vital question—how to make explicit the obligations of membership. If the Church claimed its privilege as an established body, it might be enough for it to trust to the general sense of membership and the non-coercive support of the State, in making demands upon the obedience of its members. But it might well find it preferable, even in that case, to establish a definite contract (such as would be necessary, in some degree, in the other case), by some such plan as demanding subscription to the Canons. This might be demanded only of the clergy and lay officers or representatives, or it might reasonably be demanded of voters also, as a condition of exercising the franchise. Probably the fullest demand would be the best, in view of the deplorable lack of sense of obligation to Church law which at present prevails.

XI.—This enforcement of the Canons could only be carried out

by a reformed system of ecclesiastical courts, such as must be inaugurated in due course. That question need not be discussed now, at any rate at all fully. It is, however, necessary even at this stage, in dealing with the legislative, as distinct from the judicial functions, of the Church to decide how far the Church will wish to borrow from the State coercive powers, and to exercise a coercive discipline; or how far it would be wise to content itself with its own interior spiritual powers—such as admonition, disfranchisement, and excommunication—or to exercise a purely consensual jurisdiction.

The history of the Church seems to show—even in such a small period as has here been discussed—that the use of coercive jurisdiction has frequently been fatal to the best interests of the Church, and even to any efficient exercise of its authority. In the century from 1532-1640 the English Church came to rely increasingly upon the secular authority. This policy seemed at the time to be necessary, and appeared to be justified, as a desperate attempt to secure conformity in face of stubborn and increasing, and, in some respects, well-grounded opposition. But when once Nonconformity became tolerated, this justification ceased. By that time, however, the greater part of Church authority had already been ruined in the process. During all the time when Convocation was inoperative there was no opportunity for a recovery by the Church of effective spiritual discipline over its members; and consequently the reliance upon civil authority continued at least as much as before. Indeed, it then became necessary for Parliament to take the initiative, and legislate on behalf of the Church, in a way that, till then, would have been regarded as an unwarranted disturbance of the Elizabethan balance of jurisdictions.[1]

The Elizabethan doctrine of the constitutional balance of Convocation and Parliament survived the Rebellion and even the Revolution. See for examples: (1) the action in 1661, when a Uniformity Bill was introduced into the Commons; but the Lords refused to consider it, and waited for the Convocation to make its revision of the Prayer Book first; (2) the action of the Commons in 1689, who were much offended that a Comprehension Bill had been introduced in the Lords, without first advising with the representative body of the clergy. A new attitude of Parliament towards Convocation appears at the beginning of the eighteenth century. The correspondence of this with the new attitude simultaneously evidenced in the Law Courts with regard to the Canons can hardly be fortuitous: nor its coincidence with the suppression of Convocation. In such circumstances a quiet revolution took place, which was further facilitated by the political

[1] For an analysis exhibiting the balance as it concerned Parliament, see *Eccl. Courts Commission* (1883), pp. 144 and ff.

circumstances of the time. It was soon forgotten that things had ever been otherwise, and the new Georgian settlement was supposed to be identical with the Reformation settlement.

XII.—At the present time there is a fresh opportunity for the Church to recover its powers of legislation and its authority over its own members; and for them to recover their sense of loyalty to the duties involved in Church membership, and to distinguish it from the civil obedience which they owe to the State.

But if this is to be done, it is advisable that the area in which the Church acts on its own authority should be as large as possible; and the area in which it looks to the State to lend coercive power, and in which it consequently is itself restricted by compact with the State, should be as small as need be. And further, even the intermediate area, in which the Church, without having borrowed coercive powers from the State, is yet bound by the statutory recognition and authorisation of the State, had better be drawn small, rather than large. It is true that there must be some considerable and solid bonds uniting the State with any established Church, which could only be dissolved at the risk of forfeiting the established position. It is true also that those bonds must in some degree tie the action of the Church. But the less it is tied the better for itself, and the better too for the State. For it will be saved from much needless trouble, while retaining always in its hands the ultimate power.

A Church, then, that wishes to remain established had far better take a bold line than a timid one. If with unanimous voice it claims in a reasonable spirit what it ought to have, and it is prepared, for the sake of getting this, to face the threat of disestablishment, it is far more likely to win its due than if, obsessed with a fear of disestablishment, it were only to make a claim for some mean measure of autonomy, which would command neither the enthusiasm of its own members nor even the sympathy and respect of politicians and Nonconformists.

APPENDIX XI.

A NOTE ON DR. FRERE'S MEMORANDUM ON CANONICAL LEGISLATION.

By Sir Lewis Dibdin.

The following Note is to a large extent supplementary to Dr. Frere's important "Memorandum on Canonical Legislation," and is also intended to indicate certain points in it which seem to me open to criticism, and which affect the conclusions arrived at by Dr. Frere. The general purpose of his paper is to distinguish between what he calls the "Reformation Settlement" and the "New Georgian Settlement," and to show that with regard to the Canons "a quiet revolution took place." He insists that the power of Convocation to pass canons was narrowed, and that the range of their application was restricted not at, but subsequently to, the breach with Rome in the sixteenth century. The beginning of the seventeenth century is given as the date when the control of the Crown was made more rigorous than it had been in the latter half of the sixteenth century, and the beginning of the eighteenth century is said to have witnessed the definite rejection of the view—a "view upon which the Reformation Settlement" is said to have "depended"—that canons regularly enacted in accordance with 25 Henry VIII., ch. 19, were binding on the laity in matters properly within the domain of canons. I venture to doubt whether the conclusion which Dr. Frere thus seeks to establish is really justified by the facts. I cannot think, either, that the added requirement of a licence from the Crown to Convocation before the framing of draft canons, or that Lord Hardwicke's celebrated judgment in *Middleton* v. *Crofts* made the tremendous change Dr. Frere supposes. I shall submit my reasons presently. But also it seems to me that, in order to obtain at all an accurate view of the relative position of canons immediately after the breach with Rome and at the beginning of the eighteenth century, it is essential to consider not only the machinery for their enactment and the class of persons

bound to obey them, but further, and perhaps chiefly, the subjects dealt with by canon. We want to understand what matters were considered appropriate for canonical, and what for parliamentary, legislation, at the one date and at the other before we can usefully form an opinion as to whether the "quiet revolution" Dr. Frere speaks of really took place. I do not find that this aspect of the matter is regarded in his Memorandum.

I do not fully understand Dr. Frere's statement of what he calls "the threefold nature of Church law."[1] He seems to recognise three sorts of Church law, (*a*) the law which the Church lays down for its members, (*b*) a law which the State passively recognises and leaves the Church to enforce in its own way, and (*c*) a law which the State actively enforces. I am not clear that the distinction between (*b*) and (*c*) corresponds to anything in actual existence in England. Further, even if we accept (*a*) as adequately describing the law which regulates the internal order, administration, and discipline of the Church of Christ, it seems to follow that (*b*) and (*c*) must be merely parts of (*a*), and not something of a different "nature." As a statement of "three degrees of obligation imposed" by Church law, I venture to think it requires a good deal of elucidation. Bishop Stubbs' somewhat similar statement in his historical appendix to the Report of the Ecclesiastical Courts Commission[2] seems preferable :—

> " . . . three principles are working together in the present state of things—
>
> (1) There is a law which is assumed to be of divine origin, at all events is common to historical Christendom.
>
> (2) There is a national acceptance and recognition which might work through voluntary obedience and the use of simply spiritual authority; but which
>
> (3) At the present goes further and places certain machinery of the national executive at the disposal of ecclesiastical judges, with due safeguards against misuse."

A canon is defined in the Oxford Dictionary quite generally as a "Church decree," and in fact the word is capable of such wide application as to tell us nothing very precisely; but viewed historically with reference to the Church of England it is the name by which three distinct sets of laws or rules are known. The Canons are: (1) The Roman canon law as received in England prior to the Reformation, (2) the provincial and legatine canons made in England prior to the Reformation, and (3) the provincial canons made in England since the Reformation, and subject to

[1] page 265. [2] vol. i., 22.

the conditions of the statute of the Submission of the Clergy, 25 Henry VIII., ch. 19, *i.e.*, the Canons of 1603 and other canons made before and after that date.[1]

I.—With regard to (1) little need be said here. At the present day it is hardly questioned that the Roman canon law (with certain limitations) was regarded as binding, in the English Church courts, on clergy and laity alike, in matters properly within the jurisdiction of those courts, and so far as its application was not forbidden by the State.[2] From the date of the breach with Rome, however, the Roman canon law ceased to have any authority as such, but so far as it had become established by long use it has continued to be recognised as valid by custom, and still to be binding on clergy and laity alike, within the limited domain of its application.[3]

The contents of the Decretals in the great code of Roman canon law have been summed up thus—

Judex, Judicium, Clerus, Connubia, Crimen.

Of these five divisions the last two largely, and the others to some extent, concern the laity. The area covered is immense. It includes the doctrines of the Christian faith, morals, Church property, and organisation in the widest sense, the machinery of Church courts, the law of marriage, of the grades, duties and privileges of the clergy, and of the care, regulation and administration of Church fabrics, services, and sacraments.

II.—With regard to (2), viz., provincial and legatine canons made in England prior to the Reformation (*i.e.*, for this purpose prior to 25 Henry VIII., ch. 19), there seems to be no doubt that before Henry VIII.'s reign Convocation frequently met on its own initiative.[4] I have elsewhere[5] suggested that the king's writ for its assembly was used only when a subsidy was sought, and not when canons were to be passed. This, however, is more or less matter of controversy, and there is the authority of an Act of Parliament,[6] and the scarcely less weighty authority of Coke,[7] for the statement that the Convocation "always hath been

[1] I have omitted all reference to the Canons of 1640. The time in which they were enacted was so disturbed as in my opinion to make them useless as a precedent of normal constitutional practice.

[2] *Quarterly Review*, Oct., 1912, Art. 6: "Roman Canon Law in England."

[3] 25 Henry VIII., ch. 21 (preamble).

[4] See the Dean of Wells' evidence. 1st Rep. Select Com. Church in Wales, 1914 (238), p. 30, Question 376.

[5] See my evidence, *idem.*, pp. 4 and 5, Questions 77-87.

[6] 25 Henry VIII., ch. 19.

[7] 4th Institute, p. 322.

assembled only by the king's writ." But so far as I know there has never been any doubt that, prior to 25 Henry VIII., ch. 19, Convocation when assembled could and did enact canons without such canons having the royal assent. Coke seems to state this categorically.[1] The legatine constitutions of Otto and Ottobon were not made with the king's assent, though the king favoured the holding of the legatine councils at which they were made.[2]

It is clear that the English pre-Reformation canons bound the laity in spiritual matters. In 1285 the statute (or writ) *Circumspecte Agatis* declares that the bishops were not to be prohibited "if they hold plea, in court christian, of such things as be meer spiritual that is to wit, of penance enjoined by prelates for deadly sin as fornication, adultery, and such like." The same is said of proceedings "for laying violent hands on a clerk," defamation and breach of faith, provided they be merely "for punishment of sin."[3]

The Heresy Acts treat the ecclesiastical jurisdiction over laymen as valid but ineffective.[4] "Forasmuch as the cognisance of heresy, errors and Lollardries belongeth to the Judges of Holy Church and not to secular Judges: such persons indicted shall be delivered to the ordinaries of the places or to their commissaries by indentures betwixt them to be made within ten days after their arrest or sooner if it may be, thereof to be acquit or convict by the laws of Holy Church."[5]

It is certain that laymen were dealt with under the Heresy Acts, and not less so that "the laws of Holy Church" included the English provincial and legatine canons which, as edited by Lyndwood and John of Athon, formed a text-book in use in the Church courts.

In 1532 the "Petition of the Commons" to the king was presented. It was a very important document which prepared the way for the submission of the clergy. The first complaint against the clergy was that "the clergy . . . . have in their convocations heretofore made . . . . many divers fashions of laws, constitutions, and ordinances without your knowledge or most royal assent, and without the assent . . . . of any of your lay subjects; unto the which laws your said lay subjects have not only heretofore and daily be constrained to obey as well in their

[1] 4th Institute, p. 323: "But by the s[d] Act of 25 Hy. VIII. their jurisdiction and power is much limited and straitened concerning the making of new Canons: for they must have both licence to make them, and after they be made the King's royal assent to allow them before they be put in execution." *Stubbs' Const. History*, iii., 349, &c.

[2] *Stubbs' Const. Hist.*, ii., 57, 58, 74; iii., 322.

[3] *Statutes Revised*, i. 37; Pollock and Maitland, *Hist. Eng. Law*, ii., 198, 199; Gee and Hardy, *Documents*, &c., p. 83.

[4] 2 Henry IV., ch. 15.

[5] 2 Henry V., ch. 7.

bodies, goods, and possessions, but also be compelled to incur daily into the censures of the same," &c.[1]

The bishops in their reply did not deny the facts, but pleaded that they merely carried out their duty "prescribed by God."[2]

As to the matters dealt with in the English pre-Reformation Canons it must be admitted that these canons are in the main supplemental to the general canon law as received in England. Lyndwood thus describes them: *Possunt etiam constitutionibus papalibus addere at eas supplere et ad correctionem morum statuta facere præceptoria, prohibitoria et pœnalia dum tamen jus commune non subvertant* [cites Hostiensis, &c.]; *Possunt etiam in his quæ ad ipsorum jurisdictionem pertinent statuta facere, dum tamen legibus generalibus non obsistant*[3] [cites John Andreæ]. As Maitland pointed out, the English Canons "contain little that is new and are only a brief appendix to the common law of the universal Church."[4] They provide nothing like a code or a complete system of Church law, and they largely deal with rather subordinate details.

On the other hand the number of pre-Reformation Acts of Parliament dealing with purely ecclesiastical matters is small. There was indeed a wealth of legislation about tithes, advowsons, glebes, church tenants, benefit of clergy, prohibitions, testamentary cases, and other matters where the Church touched secular interests; and there were a large number of anti-papal statutes (*e.g.*, præmunire and provisors) which had a political aspect. But with the exception of the Heresy Acts and Henry VII.'s Clergy Discipline Act,[5] and various enactments as to clerical dress,[6] we shall find little *Church* law made by Parliament before Henry VIII. The reason is of course plain. The law as to spiritual matters was in spiritual hands, and came primarily and chiefly from Rome. The State and the King's Courts contented themselves with confining the spiritual domain within narrow limits and with jealously watching any attempt to transgress those limits.

III.—I proceed to consider the post-Reformation Canons, *i.e.*, canons made in accordance with the conditions laid down by 25 Henry VIII., ch. 19 (1534). The petition of the Commons in 1532 has already been mentioned. It has an important bearing on

[1] Gee and Hardy, *Documents*, &c., pp. 145, 146.
[2] *idem*, pp. 154, 157, 160.
[3] *Provinciale* (ed. 1680, p. 70) *de Majoritate et Obedientiâ*, cap. *Presbyteri* verb. *juramento*.
[4] *Canon Law in the Church of England*, p. 37.
[5] 1 Henry VII., ch. 4: An Act to punish priests for incontinency by their ordinaries.
[6] *e.g.*, 37 Ed. III. ch. 13.

the Act because the petition, the Reply of the Bishops, the Submission of the Clergy (May 15, 1532), and the Act 25 Henry VIII., ch. 19, are a succession of connected events.[1] It will be remembered that the Commons' complaint as to the Canons is twofold, that they had been made without the king's assent, and also that they bound the laity without *their* consent. The bishops' answer, written by Gardiner, was an assertion of their duty to act as they had done. But the king bullied the bishops. Gardiner apologised,[2] and subsequently the submission was duly signed. Both it and the Act provide that no new canon is to be made without the royal assent, but the other claim of the House of Commons that the consent of the laity (which in their mouth could only mean the consent of Parliament) should also be required is ignored. This seems an important fact to bear in mind in considering the effect of canons made under Henry's Act upon the laity. It was admitted by both sides that canons enacted in Convocation had hitherto bound the laity without their being consulted, and yet the new Act made no change in this respect. The inference I draw is that it was not intended to make any change of that kind.

The Convocations after 1534 until Elizabeth's reign were busy with the great conflict with Rome, but in Elizabeth's time several sets of canons were prepared. Those of 1571[3] the queen would not sanction, not because she disapproved them, but because she desired the bishops to act alone and thus save her from personal responsibility. The Canons of 1575,[4] 1585,[5] and 1597[6] received the royal assent, but in a form which was effectual only during her life.[7] The Canons of 1603, however, contained a consolidation of these earlier and more fragmentary efforts, and it is to them alone that, for the present purpose, we need have regard.

Dr. Frere sees in the steps taken on this occasion to obtain the royal assent an attempt to tighten the control of the State over Convocation. The submission of the clergy provided for three conditions before a canon could be enacted: (i.) Convocation must be assembled on the king's writ; (ii.) the king must give a licence to Convocation to make canons; (iii.) the king must assent to the canons when made. Dr. Frere (who, I think, quotes the submission in one of its earlier forms which was greatly modified[8]) states that (ii.) had not before been required. If that be so it

[1] Gee and Hardy, *Documents*, &c., pp. 145, &c., 154, &c., 176, &c., 195, &c.
[2] *Collier's Ecc. Hist.*, iv., 190.
[3] Cardwell, *Synodalia*, i., 111, &c. *Ch. Hist. Soc. Tracts*, No. XL. (Bishop Collins.)
[4] Cardwell, *Synodalia*, i., p. 132, &c.
[5] *idem*, p. 139, &c.
[6] *idem*, p. 147, &c.
[7] L'Estrange, *Alliance*, &c. (Lib. Anglo. Cath. Theol.), p. 35.
[8] Joyce's *Sacred Synods*, p. 343, &c. Dr. Frere's Mem., pp. 268, 270.

would seem that the earlier practice was incorrect because the Act 25 Henry VIII., ch. 19, appears to contemplate all three of the conditions laid down in the submission itself. But in any event the point seems a small one, because it is not denied that the king's assent to the actual words of any proposed canon had been essential at all times since the Submission Act passed.

The Canons of 1603 (141 in number) have been often described as ecclesiastical bye-laws. They fall roughly into two divisions. In a few instances one Canon contains more than one enactment and falls both under the first and the second category. Those (60 in number) in the first division are intended to enforce, generally by a penalty (*e.g.*, excommunication), already existing laws. Those (80 in number) in the second division are directions in matters of detail (*a*) for clergy, (*b*) for officials, (*c*) for laity (unofficial). There are four others which stand on a special footing, viz., the 30th on the use of the Cross in Baptism, which is really a homily, and owes its existence to the Hampton Court Conference; and the 139th, 140th, and 141st which, after the manner of the final decrees of a Council, launch anathemas against all who deny the authority of Convocation to represent the Church of England, and to bind laity and clergy alike.

With regard to the question whether these Canons bind the laity *proprio vigore*, there can be no doubt that they purport to do so, and the king's letters patent enjoin that they are to be "diligently observed, executed, and equally kept by all our loving subjects" of both Provinces. I have already commented on the Submission Act's apparently deliberate omission to indicate that the then well understood effect of "Canons" was to be changed in this respect. The Canons of 1603 are certainly "Canons" duly enacted under the safeguards of 25 Henry VIII., ch. 19, and therefore might be expected to have whatever authority belonged to valid "Canons" at the time the statute passed. But at that date, as we have seen, "Canons" undoubtedly bound the laity. Why, then, should the Canons of 1603 not do so? If the point were uncovered by authority there might perhaps be something to be said for this way of looking at it.

The Canons may be classified thus—73 concern the clergy, 58 concern lay officials (*e.g.*, chancellors, registrars, parish clerks, schoolmasters), 27 concern unofficial laymen. Here, again, there is some overlapping. I agree with Dr. Frere that the whole system becomes lopsided and unworkable unless the laity are included. This is emphatically the case with lay officials. Neither *Middleton* v. *Crofts* nor any other case has decided that *they* are not bound by the Canons so far as their official acts are concerned, and if any one will take the trouble to read the Canons he will very soon convince himself that under such a decision the administration of the Church of England would be reduced to a disorder even more complete than that to which we have long grown accustomed.

There is high authority for regarding the Canons as at any rate binding on Church officials.[1]

In 1736 came the case which Dr. Frere regards as indicating a great crisis. Whether *Middleton* v. *Crofts*[2] was or was not rightly decided by Lord Hardwicke when he held that without the assent of Parliament the Canons of 1603 did not *proprio vigore* bind laymen—and his judgment has an authority which only a statute could now remove[3]—I find it very difficult to adopt Dr. Frere's view of it as making an epoch of revolution in the relations of Church or State. The truth is that the point which only then—130 years after the Canons passed—came up for actual and deliberate decision in the Courts, had long been recognised as a moot point on which opposite opinions were held amongst lawyers. Chief Justice Holt[4] uttered *dicta* one way. Chief Justice Vaughan[5] uttered *dicta* the other way. Puisne judges were not less divided in opinion. Lord Hardwicke affirmed that the general opinion had been that the Canons having never been received or confirmed in Parliament could not bind the laity. His statement as to the view prevalent in his own time is important and of course reliable. It seems useless to discuss the cases in detail—the earlier ones are fully dealt with by Lord Hardwicke himself. The authorities merely show that this point was much disputed, but that when at length it came up for actual decision before a very eminent judge, he decided it, on grounds that revealed no political or ecclesiastical bias, in accordance with what had already become the general opinion. If we turn from the lawyers to the public and to the House of Commons we shall see that the revolt of the laity against the Canons of 1603 dates from the time of their enactment. Bancroft was a masterful person who had no gift for conciliation, and the House of Commons, never inclined to favour Convocation, was quickly roused to oppose the new Canons. In 1605 a Bill for the restraint of their execution unless confirmed by Parliament passed the Commons, and was read a second time in the Lords. In 1606 a similar Bill passed the Commons, and was read twice and committed in the Lords. In 1610 a similar Bill passed the Commons, and again all but became law. In 1614 a similar Bill was introduced, but had only been read once in the Commons when Parliament was dissolved.[6]

It would be extremely hazardous to assume that at any time between 1603 and 1736, when Lord Hardwicke's decision was

[1] *Burn. Ecc. Law*, i., Preface, xxxix.

[2] 2 Atkyns, 650.

[3] See Lord Blackburn in *Bishop of Exeter* v. *Marshall*, 3 H.L., L. R., 17, at p. 35.

[4] *Brittain* v. *Standish*, Modern Cases, 188.

[5] *Hill* v. *Good*, Vaughan, 327.

[6] I have taken these facts from Lewis' *Reformation Settlement*, pp. 352, 353, 360, 367. He gives references to the Journals of the Houses.

given, there was any general acceptance (outside ecclesiastical circles) of the Canons as binding on laymen.

Dr. Frere refers in a note[1] to a few disciplinary lay cases in which a canon was relied on in the Church courts. But they seem to me to shew nothing more than that some ecclesiastical officials took the Canons at their face value until *Middleton* v. *Crofts* made it impossible. With the exception of two prosecutions in the Durham High Commission Court, all the cases cited are from one minor Church court—an archdeacon's; they seem to relate to persons of humble position, who were unlikely to contest the matter by appeal or prohibition; the offences charged were cognisable in the Church courts quite apart from the Canons; and we have only short excerpts of the pleadings, so that it is possible the prosecutions were primarily under the general ecclesiastical law, and that reference to the Canons was added *ex abundanti cautelâ*.[2] But although I do not think we possess evidence which should convince us that the Canons of 1603 were generally and deliberately enforced as binding on the laity *proprio vigore*, it would be easy by quoting visitation articles and (probably) Charges to adduce evidence which would shew that ecclesiastical officials in the seventeenth century demanded obedience to the Canons from the laity as well as the clergy. I do not know whether *Middleton* v. *Crofts* caused much change in this respect, or whether visitation articles in the eighteenth century continued to be largely founded on the Canons of 1603, and to treat those Canons as equally binding on the laity and clergy.[3]

I venture to think that Dr. Frere is inclined to exaggerate the importance of the point as practially affecting the relations of Church and State. The Canons are few, which directly purport to make new regulations for the laity, as distinguished from repetitions of already existing laws and their enforcement by a defined penalty.[4] Out of the 141 Canons I have noted six only of this description.[5] These require "reverence" at "Divine ser-

[1] page 272.

[2] Hale's *Precedents*, p. 245 (not bowing at Name of Jesus: brawling); p. 247 (standing godfather to his own child); pp. 259, 261 (not bowing, &c.). See, however, similar cases in the sixteenth century under the general ecclesiastical jurisdiction, pp. 157, 175, 191.

[3] For visitation articles of the seventeenth and early eighteenth centuries see the Appendix to the Second Report of the Ritual Commission, and especially the Articles of Bancroft, King (London), and Andrewes. I know of no similar collection for the period after 1736. I have consulted the Canterbury forms of this time, but they are extremely brief, do not seem to deal with the laity at all, and even as to the clergy do not seem to be founded on the Canons.

[4] Godolphin's *Abridgement*, App. 11 (ed. 1687) writes ". . . . those excellent canons of King James, most of which are but repetitions of those in Lyndwood; that so by that new publication they might have the better and stricter observance."

[5] Canons 18, 19, 29, 57, 62, 100. Of course there may be others. My analysis has been hastily made. But the general result may, I think, be relied on.

vice," "loiterers not to be suffered near the church in time of Divine service," "fathers not to be godfathers," "the sacraments not to be refused at the hands of unpreaching ministers," marriage to be solemnized between 8 a.m. and mid-day, and "children not to marry under twenty-one without the consent of parents." It is difficult to see how the "constitutional balance" of Church and State could be gravely affected by the validity or invalidity of minor regulations of this sort.

The position as to the Canons of 1603 seems to be this: They were intended by their framers to bind all—clergy and laity alike; the ecclesiastical authorities demanded obedience to them from all—clergy and laity alike; lay public opinion, as expressed in the House of Commons, repudiated them from the first; their legal validity, as binding the laity, was long in doubt, but was not of sufficient practical importance to compel speedy settlement; when at length the issue was directly raised in the Courts, their invalidity as to the laity was definitely and finally decided.

There remains the question, What kind of ecclesiastical matters have been dealt with by canon since 25 Henry VIII., ch. 19? This, as it seems to me, is the most important factor of all in testing Dr. Frere's theory that the legislative powers of Convocation were, as the result of a silent revolution, usurped by Parliament in the eighteenth century.

It is a fact patent on the face of history that from the time of the breach with Rome ecclesiastical law-making has been done by means of statutes sometimes with, oftener without, the co-operation of Convocation. The immediate result of Henry VIII.'s repudiation of the Papal authority was a great increase in the volume of Church Acts of Parliament, which till then had been meagre, and although the number of such Acts has varied with the policy or idiosyncracies of different sovereigns and different Parliaments, it has remained true, from 1534 to the present day, that no considerable change has been made in the organisation, discipline, or standards of teaching or worship of the Church of England without the sanction of an Act of Parliament.

This activity of Parliament in Church affairs starts abruptly in Henry's reign, and shows itself in numerous statutes by which the gaps caused by the abrogation of Papal power were filled and the new system was built up. The reform of canons, the ecclesiastical courts, appeals, the appointment of diocesan and suffragan bishops, dispensations, marriage, pluralities, and a crowd of less critically important subjects were dealt with by Act of Parliament. These statutes were the chosen means of bringing the great changes aimed at into legal existence. There is no evidence and no reason to believe that, except so far as the submission of the clergy itself is concerned, they were formally considered by, or submitted to, Convocation. In fact, we know that when this new system began, Convocation complained to the king that statutes

were made annulling the liberty of the Church in the framing of which the clergy had not been consulted.[1] The employment of Parliament alone for the making of these new Church laws cannot be explained by the fact that most of them enact civil penalties against those who break them, and that only Parliament can create such penalties. That would be a good reason for getting the action of Convocation affirmed by Parliament, but it could not explain Convocation being entirely superseded. How completely Parliament overshadowed and supplanted Convocation in all disciplinary and administrative Church matters is well illustrated by the legislation as to the reform of the Canons. In 1543-4 the original Submission Act was amended, and a Parliamentary Commission was to be appointed not only to examine the existing Canons, but also to establish such new ones as should be thought by the king and the commissioners "convenient to be used in all spiritual courts." Convocation was thus simply ignored.[2] The same course was followed in Edward VI.'s reign, and at any rate in the earlier years of Elizabeth's reign. When important law-making was in hand, it was Parliament and not Convocation which was used for the purpose. The Supremacy Act,[3] the Act of Uniformity,[4] and the Simony Act,[5] may be taken as chief examples belonging to the latter reign. Elizabeth's objection to the House of Commons meddling with ecclesiastical affairs was not at all because she desired Convocation to deal with them by canon. As we have seen, her assent to canons was sometimes refused, and when not refused was imperfectly given. Her plan was to urge the bishops to take action along the lines she favoured, but to do so on their own authority without involving the queen in responsibility. Hence Archbishop Parker's urgent request for "some authority" without which "we shall not be able to do so much as the queen's majesty expecteth for of us to be done"; and his complaint that he is left to act "having no warrant but the queen's majesty's only word of mouth."[6]

This supersession of Convocation as the instrument of disciplinary and administrative legislation, and the substitution of Parliament in its place, constitute a real revolution compared to which the effect of *Middleton* v. *Crofts* seems a small affair indeed.

On the other hand I believe it is also a fact—and a fact of capital importance—though less obvious and less generally recog-

[1] State Papers, Henry VIII., vol. v., No. 1017. (May, 1532.)
[2] 35 Henry VIII., ch. 16.
[3] 1 Eliz., ch. 1.
[4] 1 Eliz., ch. 2.
[5] 31 Eliz., ch. 6.
[6] See the letters which passed between the Queen, Cecil, Parker, and Grindal with reference to the enforcement of uniformity (1564-6), especially Nos. CLXX., CLXXVI., CLXXIX., CLXXXII., CCIII. (referred to in the text), CCIX., CCX., CCXV. (*Parker's Correspondence*, PS.).

nised than that we have been considering, that the character of synodical legislation underwent a great change at the date of the breach with Rome, and that that change has been maintained ever since. Prior to the Reformation, English Canons, as has already been said, dealt, in the main, with administrative and disciplinary details. But since 1534 the Convocations have left the business side of the Church of England to Parliament, and in matters of discipline have not done much more than repeat and enforce old rules. On the other hand their action—and at times they have been very active—has been important in the region of the teaching and forms of worship of the Church of England. It has been substantially recognised, notwithstanding many inconsistent exceptions, that in questions of this sort the voice of the Church itself must be heard, and that no form of establishment can without positive absurdity leave the State to arrange Liturgies and Articles of Faith for the spiritual society. In Henry VIII.'s time it was recognised that "decrees and ordinances upon the matter of Christian religion and Christian faith or the lawful rites, ceremonies, and observations of the same" should be made by "the Archbishops, Bishops, and Doctors now appointed," &c., or else "by the whole clergy of England" [*i.e.*, as I suppose, the Convocations].[1] Elizabeth's Supremacy Act contains the same principle. Nothing was to be adjudged heresy except by the authority of Scripture or the first four councils or any other general council basing itself on express words of Scripture or "such as shall hereafter be . . . . adjudged . . . . heresy by the High Court of Parliament[2] *with the assent of the clergy in their convocations.*"

When Henry VIII.'s Parliament passed the Act to enforce the "Six Articles" "for abolishing diversity of opinions," it recited the assembly of "a synod and convocation of the Archbishops, Bishops, and Clergy," and that the Six Articles had the assent of the learned men of his clergy in their convocations.[3]

The first Prayer Book of Edward VI. was probably approved by Convocation, but the subject is too complex for discussion here. The second Prayer Book of Edward VI. and the Elizabethan Prayer Book were not submitted to Convocation prior to their enactment by the second and third Acts of Uniformity. The revision of James I. was very slight, and was not submitted to either Parliament or Convocation. The revision of 1661 was the work of Convocation, affirmed by Parliament without debate, although the House of Commons put on record an assertion of its right to have debated the alterations made by Convocation in the Prayer Book.[4]

[1] 32 Henry VIII., ch. 26.
[2] 1 Eliz., ch. 1, sec. 20.
[3] 31 Henry VIII., ch. 14.
[4] Selborne's *Liturgy of the English Church*, pp. 58, &c.

The 42 Articles of 1542 purport to have had the assent of Convocation, and the 39 Articles of 1562 had synodical sanction.

It is true, therefore, to say that in the essential matters of the Church of England's teaching and worship, Convocation has had, if not its due share, yet a great and effective part. For nearly the whole of the eighteenth and half the nineteenth centuries Convocation held no real sessions, but after its revival we find the Revised Table of Lessons Act, 1871, and the Shortened Services Act (Act of Uniformity Amendment), 1872, both of which affected the forms of public worship, considered and approved by the Convocations.

If the facts of the case are accurately stated in the above notes there can, as it seems to me, be no doubt as to the result. The predominant instrument for enacting Church legislation since the middle of the sixteenth century has been statutory and not canonical. Convocation has had a real and effective share in legislation concerning the doctrine and liturgy of the Church of England, but with regard to disciplinary and administrative matters, which until the breach with Rome were the special concern of the Convocations, they have been ever since that time almost entirely in the hands of Parliament. Canons made since the Reformation containing new regulations have been so rare, so limited in importance, so uncertain in the range of their application, and so little regarded by the public, that it is impossible to regard the decision which gave judicial sanction to the already prevailing view of their imperfect validity, as having fundamentally affected the position of the Church in its relation to the State. In other words, the middle of the sixteenth, and not the beginning of the eighteenth, century is the really critical epoch. It witnessed grave changes in the conditions of ecclesiastical legislation and the introduction of new methods which have persisted substantially unaltered ever since.

The practical importance of the historical question with which Dr. Frere's Memorandum and this Note alike deal, in connection with the work of our Committee, is very great. Dr. Frere writes: "At the present time there is a fresh opportunity for the Church to recover its powers of legislation and its authority over its own members;[1] and it is in this context that he seeks to show that Parliamentary dominance over Church legislation is after all a modern affair, dating in its fullness only from the eighteenth century, and belonging to a "New Georgian Settlement" rather than to "the Reformation Settlement."

It is essential that we should face facts. If I am right they do not support Dr. Frere's contention. Probably the Committee are unanimous in desiring to see the Church allowed to make its own laws without undue interference from Parliament. We want not only to end the mischievous paralysis of legislation from

[1] page 278.

which the Church has suffered now for many years, but also that its law-making should be in more suitable hands than those of an always reluctant and often hostile House of Commons. Schemes have been put before us, and we have generally approved them, which, if adopted, would at least have the effect of securing for the Church of England a large measure of autonomy and of preventing the House of Commons from exercising its present limitless powers of discussing and obstructing ecclesiastical Bills. And yet the Church is to remain established. That is an underlying condition to which I think nearly all the members of the Committee attach importance. We must recognise that the success of this plan is absolutely dependent on its approval by the House of Commons, and Dr. Frere advises us that "a Church that wishes to remain established had far better take a bold line than a timid one."[1] I am not concerned to question this, but I deprecate a neglect or even an underestimate of the real difficulties of our enterprise. We have seen how extraordinarily jealous the House of Commons has always shewn itself of anything like independent legislative action by the Church. In recent years, while it has shown no disposition to pass ecclesiastical Acts, it has retained all its old unwillingness to surrender its legislative power over the Established Church. Yet Parliament is to be asked to give up authority which it has exercised not merely since the beginning of the eighteenth century but ever since the Papal supremacy was abrogated, and to do this without disturbing the official recognition of the Church which we call establishment. Whether the ascendancy of Parliament in Church matters was or was not at any time defensible, it was clearly part of a system which presupposed a friendly partnership between Church and State as of two bodies united by identity of religious belief. Whatever were the difficulties and anomalies which the adoption of this theory produced in the past, and they were neither few nor small, they have been immensely increased by the gradual development of the State into a body which is external to any form of religion, not necessarily hostile to the Church, but at the best neutral as between all Churches. It would be very reckless to force on a crisis which otherwise may not come for many years, perhaps never, but it is desirable that we should appreciate the formidable character of the concession which is to be sought from Parliament. It is even open to question whether, by clinging to establishment while we ask for autonomy, we may not be giving too much regard to what Churchmen desire, and too little to what a State, organised on the new footing I have described, can grant.

[1] page 278.

APPENDIX XII.

THE POSITION OF THE INCUMBENT IN THE PAROCHIAL CHURCH COUNCIL.

1. By Lord Hugh Cecil.

It is important in considering the question of the incumbent's position in the Parish Council that we should have a clear view about the reasons for having Parish Councils at all. The establishment of Parish Councils is needed partly for the sake of improved efficiency in parochial administration. But this is not the main reason. For it is by no means every parish of which the administration needs reform. Most parishes, on the contrary, are already well administered. A few, indeed, cursed with incompetent, negligent, or wrong-headed incumbents, are in very bad order; but it is commoner to find parishes well worked by industrious and earnest clergy assisted by loyal laymen and laywomen. It certainly cannot be said in respect to these well-worked parishes that there is any crying need for reform on purely administrative grounds. Probably it is not untrue to say that in all parishes where there is a good incumbent the parochial system works better and is less in need of reform than the organisation of the diocese or of the province or of the whole English Church. But administrative reform is urgently needed in the parishes with bad incumbents; that is to say, where the incumbent, either from some moral failure or infirmity or from ill health or from a conscientious perversity of mind, has alienated the sympathies of his flock and enervated the spiritual life of the parish. Parishes in this unfortunate state are the true sphere for administrative reform in our parochial system.

But there is another and even a weightier reason for setting up Parish Councils than any to be found in the need for administrative reform. The most serious difficulty in the way of working a healthy system of ecclesiastical autonomy is the indifference of many of the laity. The whole plan of self-government which we are putting forward in this Report depends on enlisting the interest of lay Churchmen. And a large number of laymen, including many who, so far as their piety and virtue are concerned, are well fitted to take part in the government of the Church, will not be interested in the government of the Church as a whole

unless they are first of all interested in the management of Church affairs in their own parishes. Moreover, the Church suffers in reputation and influence, especially in the industrial districts, because apparently the laity have so little share in the ecclesiastical administration of the parish. It is to remedy this indifference and to remove this discredit that Parish Councils are most needed. Yet the remedy is not easy to apply. For the laity are not acutely discontented. Many are apathetically satisfied: even those who grumble, grumble half inattentively, and care after all but little to see a change. The laity are like a sick person who has lost appetite for the food that will make him strong; they have to be coaxed to swallow the self-government which will invigorate their spiritual life. It is but too likely that Parish Councils, however skilfully and elaborately constructed, will after all fail to attract them; and while they will treat such Councils quite respectfully and, if they are elected to one, will give a perfunctory attention to its business, will nevertheless feel no real increase of interest or sense of responsibility by reason of their membership. This may well happen whatever we do; but we shall be unwise if we do not adopt that structure of a Parish Council which is most likely to engage the interest of those faithful laymen who are now apathetic about Church administration.

It seems, then, that we want Parish Councils principally for two objects: to aid in reforming the unhappy parishes which have an unsatisfactory incumbent; and more widely and generally to interest the laity in Church matters and train them in ecclesiastical self-government.

It is surely plain that for both these purposes it would be most mischievous to make the incumbent the *ex officio* chairman of the Parish Council. It would be difficult and unseemly for a Council over which a culpable incumbent presided to take any steps by way of complaint or prosecution against him. Wherever there was a criminous clerk, or a negligent clerk, or an old clerk grown incompetent from infirmity, or a narrow-minded and perverse clerk who insisted on thrusting some ecclesiastical theory on his parishioners without tact or charity, the Parish Council would serve for many years, if he were its chairman, as his screen and protection, unless and until it became the scene of a painful and scandalous altercation. The very existence of Parish Councils will make it difficult if not impossible to criticise or complain of an incumbent except through the machinery of the Council. The obnoxious incumbent's answer will be simple: "I hear no complaints in my Council; no one is finding any fault there;" and with such an answer the reformer will be put to silence. The extreme and almost intolerable invidiousness of a councillor attacking his chairman would, in a country so patient and good-natured as our own, induce parish councillors to carry endurance

to the utmost limit rather than to adopt so odious a means of cure. So far as the parishes with bad incumbents are concerned, it may be felt that to set up a Parish Council with the incumbent in the chair, instead of being a reform, would be an added hindrance to improvement.

The case is just as strong in respect to interesting the laity. There is an abundance of parishes led by earnest and active incumbents, where to set up a Parish Council with the incumbent in the chair would be to change nothing, but only to establish one more parish committee among many. The laymen whom we are anxious to interest in Church work would either not serve on such a Council or, if they did serve, would give no real attention to its business, but merely put in an attendance now and again and assent to everything the incumbent proposed. The institution would have either no life at all or precisely the sort of life of which there is already plenty and which consists in the central activity of the incumbent, surrounded by laymen and laywomen, animated, indeed, by regard and sometimes enthusiasm for their pastor, but without initiative or spontaneity, without a scrap of that sort of interest in the self-government of the Church which it is a main purpose of the changes advocated in this Report to ingeminate.

It is sometimes said that what it is desired to set up is a Parochial Council, not a Lay Council. So far as I am concerned this may be met by a flat negative. I do not in the least desire to set up a Parochial Council, if that expression be distinguished from a Lay Council. As has been said, parochial administration in the great majority of parishes works well enough. To add to the unofficial committees of the parish, each with the vicar in the chair, one more official committee, still with the vicar in the chair, seems to me scarcely worth doing. The laity will feel for the new Council just what they feel for the old committees—a sentiment of approbation tempered by boredom. The new Council will not be, and will not be felt to be, their Council—their peculiar sphere—their organ in the life of the Church. It will be the vicar's Council. To please him they will join it. When they are there they will support him, or, at the best, give him the benefit of their advice and help in so far as the fatigues of their other employments have left them more than the dregs of their minds to bestow. The parish will be well worked, as it is now well worked, by the vicar. All life and activity will emanate from him. He will be the sun of the parish, while his lay helpers will be pale satellites, shining only with borrowed light. The Council will be indeed a Parochial Council, and not a Lay Council, and as such it will have none of the qualities which Church reformers desiderate, and only those which already abundantly exist in parochial Church life.

These considerations have weight which cannot be denied;

and some people who wish the incumbent to belong to the Council are sufficiently impressed to propose that, though a member, he should not be chairman unless he is specially elected to that office. It needs little effort to put aside this suggestion. The clergy, it may safely be asserted, would never consent to be ordinary members of a Parish Council. Either the clergyman must hold a position distinct from and equal to the Council, or, if he be a member of the Council at all, he must be chairman of it. Many, though not all, of the considerations already adduced against his being chairman would still apply to his being an ordinary member; and, in addition, his position would be a false one, and therefore unseemly and undignified. You cannot double the parts of parish priest and lay representative.

Another argument against the membership of the incumbent must be mentioned. While we desire to give the laity their own sphere of action, and to induce them to throw themselves heart and soul into the duties of that sphere, we do not desire to bring into the Church of England that intrusion of the laity into strictly spiritual matters which has been mischievous in other denominations. It is of deep importance that the clergy should remain, as heretofore, the ministers of the Word and of the Sacraments, the stewards of the mysteries of God. And though at present the laity err in the opposite direction and, so far from being intrusive, are unwilling to take their proper part and feel their own burden of responsibility, yet, since our reforms are to be carried out in the midst of a political democracy, there is real danger, if not at first then ultimately, that laymen should take over functions which are really episcopal, and oversee and direct the spiritual activities of their nominal pastors. This danger may and doubtless will be guarded against by assigning definite duties to the Parish Councils, which will carefully exclude what belongs to the Word and the Sacraments. But nothing is harder than to limit the activity of a body by verbal classification of what it may and may not do. Words are clumsy instruments, and in practice all sorts of cases arise which lie on the borderland and, if decided in a particular direction, ultimately move the frontier itself, so that great districts of territory are bit by bit annexed to the stronger of the two contending authorities. This has, of course, repeatedly happened in political history; and what has happened in greater fields may also happen between the Parish Councils and the clergy. A far better safeguard would be found in emphasising the distinctness of function of the incumbent and the Council by excluding the incumbent from membership altogether. The fact that he was not part of the Council, but constitutionally distinct and separate from it, would be the surest protection to him against any intrusion on its side. He could, indeed, restrain any beginnings of such intrusion quite effectively by the simple and not discourteous method of absenting himself from the Council's

meeting. An effort to control the spiritual ministrations of the parish would be felt to be absurd and futile if the clergyman were not present; and the Council would be obliged to fall back upon their legitimate resource of making a representation to the Bishop. The incongruity of a purely lay body seeking to control the spiritual functions of the ordained ministry would be so obvious as to make such an attempt impossible.

The arrangement therefore that I suggest is that the incumbent should not be a member of the Council. By that it is not meant that he should be excluded from the closest co-operation with the Council or from habitual attendance in normal circumstances at its meetings. He might and ought to attend, especially at first, almost invariably. But he would be there as a distinct and separate authority, not as part of the Council. He would sit, I imagine, by the side of the chairman, and would freely take part in the discussion. But he would not be in charge of the business; he would not be the judge of questions of order; he would tend as time went on less and less to be the originator of all important proposals. Probably he would be wise, when he found that the Council was fairly on its feet, to be occasionally absent, so that it might learn to do without him. The lay chairman even from the outset, and much more when the institution had taken root, would be the moving spirit of the Council. The administrative instincts, latent in so many Englishmen, would be fully aroused in his mind on behalf of the Council and its work. He would care to make the Council active and successful, not in order to please the vicar, but to please himself and for the sake of the work. He would begin by working hard himself; he would go on to get others to work hard too. He would see the importance of getting members of the industrial class elected, of overcoming their diffidence, and of teaching them to be first assistants and then leaders in Church work. And the laity of all classes would respond to his initiative in a way they very rarely will to the initiative of a clergyman. That impalpable aggregation of circumstances which may be called "atmosphere" in the Council would be a lay atmosphere. The laity, not very consciously but very importantly, would feel and recognise it; and the institution would grow to be that organ of lay opinion and that centre of lay interest in every parish which we are so anxious to see established. But with all this, a healthy co-operation with the incumbent would never for a moment be interrupted. The incumbent and Council would work together all the better and the more heartily because, according to the parochial constitution, the separate nature of their two authorities was plainly distinguished. In one class of circumstances, indeed, it would be wise to forbid the incumbent to attend. When a motion to complain of him to the Bishop or to prosecute him should be set down for discussion, it would be more seemly

that he should not be present. His defence should never be made to the Council but to the Bishop. And the councillors ought to be free from the embarrassment of his presence when they should design to appeal againt his faults or infirmities. But except in those rare and painful circumstances the incumbent would usually attend the meetings of the Council, and they would work together in perfect co-operation.

Thus there is no question of the incumbent being shut out from the Council. His leadership at the beginning and his co-operation throughout are indispensable. The question is in what capacity should he attend, as a part of the Council or as a distinct authority, a separate corporation co-operating with the Council, but not merged in it. This is the issue—between amalgamation and co-operation—and I plead that amalgamation should be rejected as destroying the lay character and atmosphere of the Council, preventing the creation of that invaluable official, a lay chairman, and, on the other hand, imperilling the distinct nature of the parson's function and the independence of his spiritual ministry.

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2. By Lord Parmoor.

This Memorandum is not intended as an answer to the arguments in favour of the exclusion of the incumbent from the Parish Council, which have convinced some members of the Committee in favour of that policy. I was unable to be present at the meeting at Oxford when the question was discussed in the Committee, and I have not see the Memorandum in favour of the policy of exclusion. The object is simply to summarise in the shortest practicable form some of the reasons which appear to me to tell strongly against the policy of exclusion. This policy would be detrimental in its operation to the parish, the incumbent, the lay Church parishioners, and in a not inconsiderable number of cases it would lead to the practical failure of the system. It is perhaps unnecessary to add that if this summary is correct the constitution of a Parish Church Council, with the exclusion of the incumbent, could not fail to affect injuriously the influence of the Church.

PARISH.

In parish life and Church parochial work mutual co-operation and trust between the incumbent and his Church parishioners are of vital importance. I assume that no one would deny this general proposition, and any scheme of reform which does not realise the value of this factor in successful parish organisation is foredoomed to failure. If a Parish Council is to have no influence

it may be regarded as a negligible incident in a parish, and its composition becomes comparatively unimportant. If, on the other hand, it is to be a reality and has power to deal with questions about which Churchmen care, then the policy of exclusion means the creation of a new body of effective influence to intervene in parish work from which the person, who has the first right to be consulted, and whose authority is unquestionable, is deliberately excluded. This exclusion is not only unjust to both the incumbent and the lay members of the Parish Council, but undermines at the outset the possibility of that full co-operation in work and responsibility which is the best antidote to any tendency towards friction and distrust. On this ground alone I regard a Parish Council from which the incumbent is excluded as a source of danger and founded on a mistaken view of the conditions which generally prevail in parish life.

INCUMBENT.

In addition to the loss to the parish the policy of exclusion would be detrimental to the incumbent, and curtail an influence which in the great majority of parishes is now exercised for the good of himself and his parish. I fail to understand why the incumbent should be debarred from taking his part in the Parish Council and the discussion or settlement of matters of Church interest in the parish. This is just the work which comes within the scope of the duty of the incumbent, and which the better incumbents have carried out with so much zeal and success in numerous cases. It is part of the policy of exclusion that the incumbent should no longer take his part of responsibility in all the spheres of parish Church work, or that he and the Parish Council should set up rival, and very possibly inconsistent, schemes of organisation? In the former case the incumbent would neglect duties thrown upon him by virtue of his office; in the latter case there would be wasteful overlapping, or something worse.

PARISH COUNCIL.

The lay members of the Parish Council would lose no less than the incumbent through his exclusion. Without the presence of the incumbent as a responsible member it would be useless to discuss in the Parish Council the very questions which are practically of most importance in Church parochial life. If the lay parishioners are desirous of acting in co-operation with the incumbent, which would be the condition in a large number of parishes, his exclusion is an obvious loss, and in practical working the Parish Council would be little more than a debating society. If, on the other hand, there is friction in the parish and the

incumbent and the lay parishioners find it difficult to work harmoniously, there is no better way of perpetuating friction and distrust than that the Parish Council should meet and attempt to decide on matters necessarily of joint interest when the incumbent cannot be present except as a spectator. The whole position under such circumstances appears to me to be frankly impossible.

FAILURE OF SYSTEM.

As a practical question the exclusion of the incumbent would mean the failure of the Parish Council in a large number of instances. In my experience the initiative in parish organisation largely comes from the incumbent, and it is right that this should be so, if he is a man of vigour and capacity. This work is within the sphere of the office of the incumbent, and it is his duty to give sufficient time and attention. I am sure that many Church layman would not care to attend a Parish Council from which the incumbent is excluded. It must not be forgotten that many laymen, whose opinion and work are of much value, are men of various occupations and business, ready to take their part in Church work in co-operation with the incumbent, and to support his influence. With such men theoretical objections have no great weight, but they want practical results, and a Parish Council would not appeal to them unless effectively manned, which is impossible in a large number of instances if the incumbent is compulsorily excluded.

OBJECTIONS.

The suggested difficulties consequent on the inclusion of the incumbent are not of much importance. Whatever scheme may be devised, there will be some persons of difficult nature liable to promote friction. It is unnecessary, however, to deal further with this point, since I am in favour of the Report of the Committee of which the Bishop of Southwell is Chairman, and of which I am a member. I hold the view that the method of the constitution of a Church Council is a matter to be determined by the Representative Church Council, and that it should be so determined on the Report of the Committee appointed for this purpose. Should the Representative Church Council determine that a Parish Council cannot be constituted except by the exclusion of the incumbent, it would be better not to press forward the scheme at the present time. I should feel compelled to vote in the negative.

3. By the Bishop of Oxford.

I am encouraged to make some remarks on the Memoranda presented by Lord Hugh Cecil and Lord Parmoor dealing with the question whether the incumbent should or should not be both a member and *ex officio* chairman of the Parish Church Council. I take it that both agree that the incumbent should be, if a member, then also *ex officio* chairman. Lord Hugh Cecil argues this explicitly, and I agree with his argument. Lord Parmoor says nothing about it, but assents to the Report of the Bishop of Southwell's Committee, which proposed that he should be *ex officio* chairman, and secured the assent of the Representative Church Council to this proposal. The question remains then: Whether he should be a member at all?

On this question I find myself in agreement with Lord Hugh Cecil's argument, so far as concerns certain duties of the Parish Church Council, which arise only when the parish is vacant, or when the incumbent is at variance with the laity, and the laity are to approach the Bishop through the Council. Thus, when in the vacancy of the benefice, the Parish Church Council is to make representation to the Bishop as regards the suitability of the patron's nominee, or when they are resolved to complain of alterations in the services or ornaments of the Church, or of the incumbent's conduct of parochial affairs, or to take proceedings against an incumbent, I feel that no one of the clergy should be a member of the Council. To secure this, I would suggest some such regulation as this: That every Parish Church Council (or if the parish be too small to have a Parish Church Council, then the Parish Meeting) should have a lay vice-chairman elected by itself, whose duty it should be, during the vacancy of the benefice or at any other time on the request of two members of the Council, to summon a meeting of the lay members of the Council, and that for all the purposes enumerated on page 15, under the head (2), this meeting should have all the rights of the whole Council. On the other hand, for all other purposes and under ordinary conditions, I am not satisfied by Lord Hugh Cecil's arguments, but I am, on the whole, disposed to agree with Lord Parmoor, that the incumbent should be both a member and *ex officio* chairman of the Parish Church Council.

The Representative Church Council this year agreed to this, but decided also that all the licensed curates should be *ex officio* members of the Council. In parishes where there are many licensed curates this, I think, would be excessive. It is most important that the Council should retain a predominantly lay character, and there are not a few parishes where there are nine or ten clergy. I would provide, therefore, that the clerical members of the Council altogether should not exceed one in ten

of the whole membership of the Council, and that where this would exclude some of the licensed clergy, they should have the right to fill up the number by election amongst themselves.

With regard to matters contemplated in (2) (*b*), (*c*), (*d*), page 15, my proposal would then work thus: There are certain matters on which the Church (by canon or rubric) gives definite directions, and in the future contemplated by us, if the Church acquires freer powers of self-government, it is to be hoped that the directions of the Church would be directions given in view of present circumstances. Such directions given by the Church for all parishes would, of course, be obligatory in all parishes. But with regard to matters left open by the Church, if the incumbent desired to make an alteration in what had hitherto been customary, he would naturally ascertain the feeling of the Parish Council. If the Parish Council was opposed to the proposed change, and if he still acted in neglect of their wishes, it would be for the members of the Council to secure a meeting of the lay representatives without the incumbent or any other of the clergy in the manner suggested above, and to make formal representation to the Bishop. They would behave in the same way if they desired in any other respect to make complaint of or take proceedings against the incumbent.

My desire is to assent to the proposal that, in certain cases, the Bishop should have greater power than he now has to terminate a dispute by authoritative action; but I would not give him any such added powers unless the complaint were made to him by the Church Council—the official organ of the whole parish. The same would apply to the powers which should be given to the Bishop to refuse a presentee to a vacant parish if he were conspicuously distasteful to the parishioners. In that case also the added power given to the Bishop should be conditional on the representation being made by the Parish Council. This, of course, would not take away any powers the Bishop has at present of giving a hearing to any parishioners, and using his influence to provide a remedy for any complaint which he thinks is legitimate. It would simply provide that certain additional powers proposed to be given to the Bishop should be exerciseable only on representation of the Council.

To resume, then, I should wish to mediate between Lord Hugh Cecil and Lord Parmoor, and to propose that for certain purposes neither the incumbent nor any of the clergy should be members of the Council, but that under normal circumstances some at least of the assistant clergy should be members of the Council, and that the incumbent should be both a member and *ex officio* chairman.

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